

DOCUMENT APPENDIX TO REPORT OF EXAMINER

Tab No.	Document Description	Date	Case No. and Caption
1	AAA Arbitration Demand	12/9/2011	AAA Case No. 16 0783 00744 11
2	Administrative Resolution No. 2012-02	6/24/2012	--
3	Administrative Resolution No. 2012-03	6/24/2012	--
4	Administrative Resolution No. 2012-06	10/3/2012	--
5	Bylaws of First Owners' Association	--	--
6	Complaint	9/15/2011	First Owners' Association v. Gordon Residential Holdings, LLC, Case No. 11-004411 (Alex. Circuit Court)
7	Complaint	10/7/2011	Gordon Properties, LLC v. Board of Directors of First Owners' Association, et al., Case No. 11-004700 (Alex. Circuit Court)
8	Complaint	12/6/2012	Sobel, et al. v. Sells, et al., Case No. 12-005183 (Alex. Circuit Court)
9	Complaint	9/28/2012	First Owners' Association v. Cuandros, et al., Case No. 12-004429 (Alex. Circuit Court)
10	Declaration of Forty Six Hundred Condominium	--	--
11	Joint Motion to Approve the Settlement Agreement	1/28/2013	In re: Gordon Properties, Case No. 09-18086 (U.S. Bankruptcy Court for E.D. Va.)
12	Letter Opinion	2/23/2009	Gordon Properties, LLC v. First Owners' Association, et al., Case No. 08-0011432 (Alex. Circuit Court)
13	Letter Opinion	4/3/2009	Gordon Properties, LLC v. First Owners' Association, et al., Case No. 08-0011432 (Alex. Circuit Court)
14	Memorandum in Support of Motion to Reconsider Order Appointing <i>Amicus Curiae</i>	4/30/2013	In re: Gordon Properties, Case No. 09-18086 (U.S. Bankruptcy Court for E.D. Va.)

In re: Gordon Properties, LLC and Condominium Services, Inc., Debtors in Possession

U.S. Bankruptcy Court for the Eastern District of Virginia

Case No. 09-18086-RGM

Tab No.	Document Description	Date	Case No. and Caption
15	Minutes from Organizational Meeting	6/17/2012	--
16	Minutes from Board Meeting	6/19/2012	--
17	Minutes from Special Meeting	6/24/2012	--
18	Minutes from Special Meeting	9/3/2012	--
19	Minutes from Board Meeting	9/18/2012	--
20	Minutes from Organizational Meeting	10/3/2012	--
21	Minutes from Board Meeting	10/16/2012	--
22	Minutes from Board Meeting	4/16/2013	--
23	Order (Memorandum Opinion)	9/20/2011	Gordon Properties, LLC v. First Owners' Association, et al., Adv. Proc. No. 11-1020 (U.S. Bankruptcy Court for E.D. Va.)
24	Order (Granting Relief from Automatic Stay)	1/3/2012	In re: Gordon Properties, Case No. 09-18086 (U.S. Bankruptcy Court for E.D. Va.)
25	Order (First Board Order)	6/15/2012	Gordon Properties, LLC v. First Owners' Association, et al., Adv. Proc. No. 11-1020 (U.S. Bankruptcy Court for E.D. Va.)
26	Order (Amended Board Order)	7/23/2012	Gordon Properties, LLC v. First Owners' Association, et al., Adv. Proc. No. 11-1020 (U.S. Bankruptcy Court for E.D. Va.)
27	Order (Referring Case to Mediation)	9/13/2012	In re: Gordon Properties, Case No. 09-18086 (U.S. Bankruptcy Court for E.D. Va.)
28	Order (Nonsuit)	10/31/2012	Gordon Properties, LLC v. Board of Directors of the First Owners' Association, et al., Case No. 11-004700 (Alex. Circuit Court)
29	Policy Resolution No. 2009-03	3/26/2009	--
30	Settlement Agreement	12/11/2012	--
31	Supplemental Order Directing the Appointment of an Examiner	6/4/2013	In re: Gordon Properties, Case No. 09-18086 (U.S. Bankruptcy Court for E.D. Va.)

**APPENDIX TO EXAMINER'S REPORT:
DOC 1**



American Arbitration Association
Dispute Resolution Services Worldwide

Real Estate Industry Rules ARBITRATION RULES

(ENTER THE NAME OF THE APPLICABLE RULES)

Demand for Arbitration

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange mediation, please check this box. ☐
There is no additional administrative fee for this service.

Name of Respondent Gordon Residential Holdings, LLC			Name of Representative (if known) Michael L. Zupan		
Address: c/o Registered Agent William T. Freyvogel			Name of Firm (if applicable): Mercer Trigiani LLP		
8200 Greensboror Drive, Suite 325			Representative's Address 112 South Alfred Street		
City McLean	State VA	Zip Code 22102	City Alexandria	State VA	Zip Code 22314
Phone No.		Fax No.	Phone No. 703-837-5000		Fax No. 703-837-5001
Email Address:			Email Address: Michael.Zupan@mercertrigiani.com		

The named claimant, a party to an arbitration agreement dated 11.10.75 and Order of 11.23.11, which provides for arbitration under the Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

THE NATURE OF THE DISPUTE

First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA") brings a declaratory judgment action against the Respondent. See attached Complaint setting forth the particulars of FOA's claims.

Dollar Amount of Claim \$0.00

Other Relief Sought: ☐ Attorneys Fees ☐ Interest
☐ Arbitration Costs ☐ Punitive/ Exemplary ☒ Other Declaratroy Judg

Amount Enclosed \$3,350.00 In accordance with Fee Schedule: ☐ Flexible Fee Schedule ☒ Standard Fee Schedule

PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE:
Experience with the Virginia Condominium Act (Va. Code Section 55-39, et seq.), condominium documents, and the governance of Condominium Associations.

Hearing locale Wash. D.C. Regional Office (check one) ☒ Requested by Claimant ☐ Locale provision included in the contract

Estimated time needed for hearings overall:
_____ hours or 2.00 days

Type of Business: Claimant Board of condomiun owners' associaton
Respondent unit owner

Is this a dispute between a business and a consumer? ☐ Yes ☒ No
Does this dispute arise out of an employment relationship? ☐ Yes ☒ No

If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. ☐ Less than \$100,000 ☐ \$100,000 - \$250,000 ☐ Over \$250,000

You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.

Signature (may be signed by a representative) <i>Michael S. Dingman</i>		Date: 12/9/11	Name of Representative Michael S. Dingman		
Name of Claimant First Owners' Association of Forty Six Hundred Condominium, Inc.			Name of Firm (if applicable) Reed Smith LLP		
Address (to be used in connection with this case): 4600 Duke Street			Representative's Address: 3110 Fairview Park Drive, Suite 1400		
City Alexandria	State VA	Zip Code 22304	City Falls Church	State VA	Zip Code 222042
Phone No. 703-751-4600		Fax No. 703-823-2429	Phone No. 703-641-4323		Fax No. 703-641-4340
Email Address: mdingman@reedsmith.com			Email Address: mdingman@reedsmith.com		

To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to Case Filing Services at 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent. Please visit our website at www.adr.org if you would like to file this case online. AAA Case Filing Services can be reached at 877-495-4185

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

FIRST OWNERS' ASSOCIATION OF
FORTY SIX HUNDRED CONDOMINIUM, INC.,)

Plaintiff,)

v.)

Civil Case No. _____

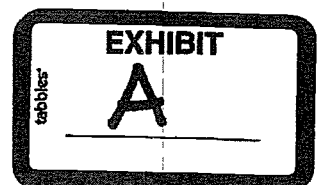
GORDON RESIDENTIAL HOLDINGS, LLC,)
Serve: William T. Freyvogel, Registered Agent)
8200 Greensboro Drive)
Suite 325)
McLean, Virginia 22102)

Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA"),
by counsel, pursuant to Virginia Code § 8.01-184, *et seq.*, seeks declaratory judgment against
Defendant, Gordon Residential Holdings, LLC ("Gordon Residential"), and in support thereof
states as follows:

1. Forty Six Hundred Condominium is a mixed-use condominium located at 4600 Duke Street in Alexandria, Virginia that is comprised of over 400 units and that was created in 1975 pursuant to the Declaration attached as **Exhibit 1** to this Complaint (the "Condominium").
2. FOA is a Virginia non-stock corporation formed pursuant to the requirements of the condominium instruments and § 55-79.73A of the Virginia Condominium Act to oversee the management of the Condominium as its unit owners' association.



3. Gordon Residential is a Virginia limited liability company that owns one unit in the Condominium known as unit 1518 which it acquired from Gordon Properties, LLC on August 7, 2008.

4. Gordon Properties, LLC is a Virginia limited liability company that owns approximately 38 units in the Condominium.

5. Bryan Sells is the managing member of both Gordon Properties, LLC and Gordon Residential.

6. At least some of the members of Gordon Residential are also members of Gordon Properties, LLC.

7. Pursuant to Article IV, Section 2 of FOA's Bylaws, attached as **Exhibit 2**, FOA holds its annual meeting on the first Wednesday of each October. One of the purposes of the annual meeting, assuming the required quorum is attained, is the election of members of FOA to serve on FOA's Board of Directors.

8. FOA has scheduled its 2011 annual meeting for October 5, 2011 at which, if a quorum is attained, the Board of Directors will be elected. Gordon Residential has identified five candidates to run for election to FOA's Board of Directors. The five candidates are Deneta Sells, Moneta Howard, Eliza Langdon, Brandy Greenwell and Nick Greenwell. Gordon Residential maintains that they are all officers of Gordon Residential.

9. Deneta Sells is the wife of Bryan Sells.

10. Brandy Greenwell is the sister of Bryan Sells and is a member of Gordon Properties, LLC.

11. On March 26, 2009, FOA's Board of Directors adopted Policy Resolution No. 2009-03, attached as **Exhibit 3**, to bring together and to clarify the requirements for service on the Board of Directors already contained in the Condominium Act and the condominium instruments. The resolution states, in part, that a member of FOA, either a natural or non-natural person, may have only one position or one representative on FOA's Board of Directors at any given time. Therefore, for example, a non-natural entity such as Gordon Residential is entitled to one representative on the Board of Directors, assuming that person is elected pursuant to the Bylaws of FOA.

12. The portion of Policy Resolution No. 2009-03 providing that a member may only have one position on FOA's Board of Directors is simply a restatement of the requirements of provisions of the Virginia Condominium Act and FOA's Bylaws defining a member and unit owner.

13. Article III, "Membership," Section 1 of FOA's Bylaws, "Members" states: "Every person, group of persons, corporation, trust or other legal entity, or any combination thereof, which owns a condominium unit within the condominium project shall be a member of the owners association" This provision makes clear that a non-natural person (such as a limited liability company) or group of persons is deemed a single unit owner or member.

14. Article V "Directors," Section 1 of FOA's Bylaws, "Numbers and Qualification" states: "The affairs of the Owners' Association shall be governed by the Board of Directors (hereinafter sometimes referred to as "Board of Directors") composed of at least seven (7) natural persons who shall (after the first annual meeting of members) be members of the Owners' Association. At least one of the Directors, but not more than two, shall be owners of Commercial Condominium Units . . ."

15. Section 55-79.78B of the Virginia Condominium Act states: "If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of subsection (a) of Section 55-79.50, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner and/or trustee of any person which is, either alone or in conjunction with another person or persons, a unit owner." In short, this provision provides, consistent with the provisions of FOA's Bylaws, that a non-natural person or a group of persons who own a unit are deemed a single unit owner.

16. Gordon Residential is running five of its officers and/or members who are intended to serve simultaneously on the Board of Directors, assuming they obtain the requisite votes at the upcoming annual meeting. In other words, upon information and belief, it is Gordon Residential's position that although it owns a single residential unit, because it is a non-natural person, it is entitled to seek five seats on FOA's Board of Directors.

17. It is FOA's position that the Declaration and Bylaws of FOA, as well as the Condominium Act, as set forth in Policy Resolution No. 2009-03, limit Gordon Residential to one representative on the Board of Directors at any given time. It is FOA's position that a "member" of FOA, whether a natural or non-natural person, is entitled to only one seat on FOA's Board of Directors at any given time.

18. Members of FOA have asked FOA's Elections Committee and individual Board members whether Gordon Residential is entitled to have five people hold positions on FOA's Board of Directors.

19. There is a justiciable controversy between FOA and Gordon Residential regarding the issue of whether Gordon Residential is entitled to have five representatives sit on FOA's

Board of Directors and whether a single member can have multiple representatives on FOA's Board of Directors. Resolution of this issue is critical to the upcoming 2011 annual meeting because more than a dozen candidates are running for election to the Board of Directors and whether Gordon Residential is entitled to five seats on the Board of Directors will directly impact those candidates and may affect the results of the election of FOA's Board of Directors.

20. Policy Resolution No. 2009-03 further states that entities who are "affiliated" as defined in the Policy Resolution may only collectively have one representative on FOA's Board of Directors at any given time. The purpose of this portion of Policy Resolution No. 2009-03 is to prevent any member owning more than one unit from doing indirectly what it could not do directly, effectively making an "end run" around the requirements of FOA's condominium instruments, and the Virginia Condominium Act, that limit a member of FOA to one seat on the Board of Directors at any given time.

21. The FOA Board of Directors has authority pursuant to Article V, Section 3 of FOA's Bylaws to promulgate resolutions necessary for the administration of FOA's affairs. Article V, Section 3 of FOA's Bylaws states: "The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the owners' association and the condominium project and may do all acts and things as are not by law or by these Bylaws directed to be exercised and done by the members."

22. The portion of Policy Resolution 2009-03 limiting "affiliates" to one seat on FOA's Board of Directors at any given time was implemented by FOA's Board of Directors to ensure that no single entity or group of related entities could dominate the Board of Directors and prevent representation of a wide range of interests of the over 400 unit owners. Otherwise, a member owning more than one unit could circumvent this limitation by conveying units to

related entities. Such a subterfuge would defeat these limitations and is properly prohibited by Policy Resolution No. 2009-03.

23. Gordon Properties, LLC has owned in excess of 40 units at the Condominium and currently owns approximately 38 units. On November 6, 2009 Gordon Properties, LLC conveyed one of its units at the Condominium to its managing member, Bryan Sells. On August 7, 2008 Gordon Properties, LLC conveyed one of its residential units to Gordon Residential.

24. The conveyance by Gordon Properties, LLC of units to Bryan Sells individually and to Gordon Residential was a subterfuge to evade the limitation set forth in FOA's condominium instruments, and the Virginia Condominium Act, limiting a member to one seat on FOA's Board of Directors at any given time. There was no commercial or business reason for these conveyances; they were simply undertaken to evade the limitation of one member/one representative on FOA's Board of Directors.

25. Gordon Properties, LLC is running a candidate for FOA's Board of Directors, Lindsay Wilson. Bryan Sells is running as an individual for election to FOA's Board of Directors. Gordon Residential has nominated five individuals to run for positions on FOA's Board of Directors. Thus, these affiliated persons are seeking every seat on FOA's seven-member Board of Directors.

26. Upon information and belief, Gordon Residential has taken the position that Policy Resolution No. 2009-03 is invalid and unenforceable, including the provisions limiting affiliates to one seat on FOA's Board of Directors at any given time.

27. It is FOA's position that Policy Resolution No. 2009-03 is valid in its entirety, including the provisions limiting affiliates to one seat on FOA's Board of Directors at any given time.

28. There is a justiciable controversy between FOA and Gordon Residential regarding the validity of Policy Resolution No. 2009-03, including the provisions limiting affiliates to one seat on FOA's Board of Directors at any given time. It is critical to resolve this controversy prior to the 2011 annual meeting because the resolution of this issue will impact which candidates may be elected to and may serve on FOA's Board of Directors. If this issue is not resolved and multiple directors are elected by one member or affiliated group, it could call into question the validity of the Board of Directors and any actions taken by that Board.

WHEREFORE, Plaintiff, First Owners' Association of Forty Six Hundred Condominium, Inc. respectfully requests that this Court enter declaratory judgment in its favor and against Gordon Residential Holdings, LLC declaring the following:

A. The condominium instruments establishing the Condominium, and the Virginia Condominium Act, limit a member of FOA to one seat on FOA's Board of Directors at any given time and, therefore, Gordon Residential may have only one representative serve on FOA's Board of Directors at any given time;

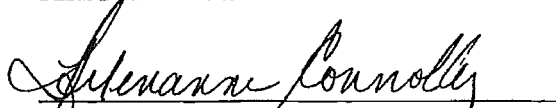
B. Policy Resolution No. 2009-03 was validly enacted by FOA and is enforceable and binding in its entirety;

C. Gordon Residential may not have a representative serve on FOA's Board of Directors if Bryan Sells, individually, or a representative of Gordon Properties, LLC, is elected to serve on FOA's Board of Directors; and

D. That the Court make such further and additional declarations, and provide such additional remedies, as are just and necessary.

FIRST OWNERS' ASSOCIATION OF FORTY
SIX HUNDRED CONDOMINIUM, INC.
By Counsel

REED SMITH LLP



Michael S. Dingman (VSB # 30034)

Robert M. Diamond (VSB # 16036)

Helenanne Connolly (VSB # 70911)

3110 Fairview Park Drive

Suite 1400

Falls Church, Virginia 22042

Telephone: 703-641-4200

Facsimile: 703-641-4340

Email: mdingman@reedsmith.com

US_ACTIVE-107275242.2

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

FIRST OWNERS' ASSOCIATION OF
FORTY SIX HUNDRED CONDOMINIUM, INC.,)

Plaintiff,)

v.)

GORDON RESIDENTIAL HOLDINGS, LLC)

Defendant.)

Civil No. CL 2011 00 4411

ORDER

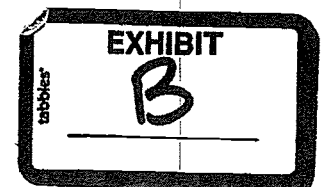
THIS CASE CAME before the Court on October 26, 2011, upon the Motion to Stay All Proceedings and to Compel Arbitration filed by Defendant Gordon Residential Holding, LLC; and

UPON CONSIDERATION of the Motion to Stay All Proceedings and to Compel Arbitration and supporting memoranda, Plaintiff's Opposition to Motion to Stay All Proceedings and to Compel Arbitration, and the oral argument of counsel;

IT APPEARING that Defendant's Motion should be granted in part and denied in part, as set forth in the Court's November 1, 2011 letter opinion, a copy of which is attached hereto.

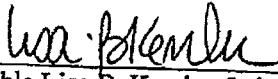
IT IS THEREFORE ORDERED that the part of Defendant's Motion seeking to compel arbitration be and hereby is granted, and the parties are directed to arbitrate all matters raised in the Complaint pursuant to Article XVII, Section 8 of the Bylaws of First Owners' Association of Forty Six Hundred Condominium, Inc.

IT IS FURTHER ORDERED that all further proceedings in the Circuit Court are stayed, except that the Preliminary Injunction entered by the Court on October 3, 2011, shall remain in full force and effect until further Order of the Court.



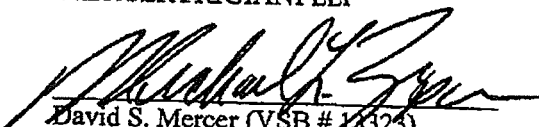
IT IS FURTHER ORDERED that Plaintiff First Owners' Association of Forty Six Hundred Condominium, Inc. shall commence such arbitration by December 16, 2011, and if arbitration is not commenced by December 16, 2011, the Preliminary Injunction is dissolved.

ENTERED this 23rd day of November 2011.


Honorable Lisa B. Kemler, Judge,
Alexandria Circuit Court

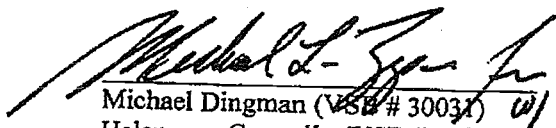
SEEN AND OBJECTED TO WITH RESPECT TO THAT PART OF THE COURT'S RULING AND ORDER THAT MAINTAINS THE PRELIMINARY INJUNCTION IN EFFECT, FOR THE REASONS STATED IN THE MOTION, THE MEMORANDUM, AND IN ORAL ARGUMENT:

MERCERTRIGIANI LLP


David S. Mercer (VSB # 18323)
Michael L. Zupan (VSB # 24962)
112 South Alfred Street
Alexandria, Virginia 22314
Tel: 703-837-5000
Fax: 703-837-5001
Counsel for Gordon Residential Holdings, LLC

SEEN AND OBJECTED TO AS TO THE COURT'S RULING GRANTING THE STAY AND COMPELLING ARBITRATION:

REED SMITH LLP


Michael Dingman (VSB # 30031) w/ permission
Helenanne Connolly (VSB # 70911)
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042
Fax: 703-641-4340
Counsel for First Owners' Association of Forty Six Hundred Condominium, Inc.

**Circuit Court of Alexandria
Virginia**

Judges
DONALD M. HADDOCK
LISA BONDAREFF KEMLER
NOLAN B. DAWKINS



Courthouse
520 King Street
Alexandria, Virginia
22314-3164
(703) 746-4123

November 1, 2011

Michael S. Dingman, Esquire
REED SMITH LLP
3110 Fairview Park Drive, Suite 1400
Falls Church, VA 22042

Michael Zupan, Esquire
Mercer Trigiani
112 South Alfred Street
Alexandria, VA 22314

Re: *First Owners' Association of Forty Six Hundred Condominium, Inc.*
v. Gordon Residential Holdings, LLC, Civil Case No.: CL11004411

Counsel:

Before the Court is the motion of Defendant Gordon Residential Holdings, LLC ("RCH") to stay all proceedings and to compel arbitration, and the opposition thereto filed by Plaintiff First Owners' Association of Forty Six Hundred Condominium, Inc. After hearing argument on the motion and opposition, the Court took the matter under advisement. Upon further consideration of the applicable provisions of the Condominium Act (Virginia Code § 55-79.39, *et seq.*), the condominium instruments, pertinent case law, the parties' memoranda and arguments, the Court grants RCH's motion to compel arbitration and stay the proceedings in this matter, but continues the Preliminary Injunction issued on October 3, 2011, until further order of the Court.

Counsel are directed to prepare an Order consistent with the rulings in this letter, to which counsel may note any objections, endorse the same and submit it to the Court for entry with seven (7) days hereof.

Very truly yours,

Lisa B. Kemler

Lisa B. Kemler

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

FIRST OWNERS' ASSOCIATION OF
FORTY SIX HUNDRED CONDOMINIUM, INC.,)

Plaintiff,)

v.)

Civil No. CL 2011 00 4411

GORDON RESIDENTIAL HOLDINGS, LLC)

Defendant.)

ORDER

THIS CASE CAME before the Court on October 26, 2011, upon the Motion to Stay All Proceedings and to Compel Arbitration filed by Defendant Gordon Residential Holding, LLC; and

UPON CONSIDERATION of the Motion to Stay All Proceedings and to Compel Arbitration and supporting memoranda, Plaintiff's Opposition to Motion to Stay All Proceedings and to Compel Arbitration, and the oral argument of counsel;

IT APPEARING that Defendant's Motion should be granted in part and denied in part, as set forth in the Court's November 1, 2011 letter opinion, a copy of which is attached hereto.

IT IS THEREFORE ORDERED that the part of Defendant's Motion seeking to compel arbitration be and hereby is granted, and the parties are directed to arbitrate all matters raised in the Complaint pursuant to Article XVII, Section 8 of the Bylaws of First Owners' Association of Forty Six Hundred Condominium, Inc.

IT IS FURTHER ORDERED that all further proceedings in the Circuit Court are stayed, except that the Preliminary Injunction entered by the Court on October 3, 2011, shall remain in full force and effect until further Order of the Court.

IT IS FURTHER ORDERED that Plaintiff First Owners' Association of Forty Six Hundred Condominium, Inc. shall commence such arbitration by December 16, 2011, and if arbitration is not commenced by December 16, 2011, the Preliminary Injunction is dissolved.

ENTERED this ____ day of November 2011.

Honorable Lisa B. Kemler, Judge,
Alexandria Circuit Court

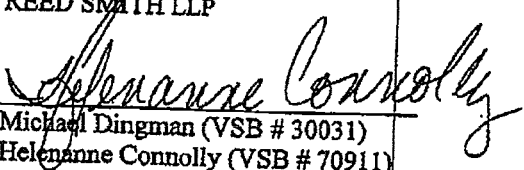
SEEN AND OBJECTED TO WITH RESPECT TO THAT PART OF THE COURT'S RULING AND ORDER THAT MAINTAINS THE PRELIMINARY INJUNCTION IN EFFECT, FOR THE REASONS STATED IN THE MOTION, THE MEMORANDUM, AND IN ORAL ARGUMENT:

MERCERTRIGIANI LLP

David S. Mercer (VSB # 13323)
Michael L. Zupan (VSB # 24962)
112 South Alfred Street
Alexandria, Virginia 22314
Tel: 703-837-5000
Fax: 703-837-5001
Counsel for Gordon Residential Holdings, LLC

SEEN AND OBJECTED TO AS TO THE COURT'S RULING GRANTING THE STAY AND COMPELLING ARBITRATION:

REED SMITH LLP


Michael Dingman (VSB # 30031)
Helénnne Connolly (VSB # 70911)
3110 Fairview Park Drive
Suite 1400
Falls Church, Virginia 22042
Fax: 703-641-4340
Counsel for First Owners' Association of Forty Six Hundred Condominium, Inc.

FIRST OWNERS ASSOCIATION OF 4600 DUKE CONDOMINIUM AMARAS AMERICAN ARBITRATION

Invoice Date	Invoice Number	Voucher # Description	Amount
12/01/2011	120111-58	00500833 ARBITRATOR	3,350.00

12/01/2011	Check 58	006611	3,350.00
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DO NOT CASH IF THIS DOCUMENT DOES NOT HAVE A LARGE FAINT IMAGE OF THE "SECURITY PLUS" LOGO OVER A FADING PATTERN OF THE SAME LOGO.

FIRST OWNERS ASSOCIATION
C/O CARDINAL MANAGEMENT GROUP
4330 PRINCE WILLIAM PKWY #201
WOODBRIIDGE VA 22192

VIRGINIA COMMERCE BANK
ANNANDALE, VA 22003

68-525
560

006611

12/01/2011

\$3,350.00

PAY: Three Thousand Three Hundred Fifty and no/100 DOLLARS

TO AMERICAN ARBITRATION
THE ASSOCIATION
ORDER 1776 I NW STREET, SUITE 850
OF WASHINGTON, DC 20006

AUTHORIZED SIGNATURE - NOT VALID AFTER 90 DAYS

⑈006611⑈ ⑆056005253⑆ 20126174⑈

THE REVERSE SIDE OF THIS DOCUMENT MUST HAVE A TRUE WATERMARK. THIS PAPER IS ALTERATION PROTECTED. Ⓜ

**APPENDIX TO EXAMINER'S REPORT:
DOC 2**

FIRST OWNERS' ASSOCIATION
BOARD OF DIRECTORS

ADMINISTRATIVE RESOLUTION NO. 2012-02
"APPOINTING SPECIAL LITIGATION COMMITTEE"

RECITALS

WHEREAS:

- A. The First Owners' Association, Inc. ("FOA" or the "Association") is engaged in pending litigation and arbitration with Gordon Properties LLC ("Gordon Properties") and Gordon Residential Holdings LLC ("Gordon Residential"), each of which is a member of the Association, and with Condominium Services, Inc. ("CSI"), a former managing agent of the Association.
- B. The United States Bankruptcy Court for the Eastern District of Virginia has found that the Association, acting through its former Board of Directors, willfully violated the United States Bankruptcy Code by denying Gordon Properties its right to vote at FOA's 2010 annual meeting. *See Gordon Properties, LLC v. First Owners' Association of Forty Six Hundred Condominium, Inc. (In re Gordon Properties, LLC)* 460 B.R. 681 (Bankr. E.D. Va. 2011).
- C. The individual members of FOA's former Board of Directors are the defendants in a pending lawsuit brought against them by Gordon Properties.
- D. Two members of FOA's current Board of Directors, Lucia Hadley and F.J. Pepper, are among those individual members of FOA's former Board of Directors who have been sued by Gordon Properties and whose conduct, together with other members of FOA's former Board of Directors, was found to be a willful violation of law.
- E. Four other members of FOA's current board of directors, Elizabeth Greenwell, Dennis Howland, Bryan Sells, and Lindsay Wilson, are affiliated with Gordon Properties, Gordon Residential, and CSI.
- F. Under Article V, Section 3 of the Association's Bylaws, the Board of Directors has all the powers and duties necessary for the administration of the affairs of the

Association and the condominium project and may do all such acts and things as are not reserved to the members.

G. Under Article VI, Section 4 of the Association's Bylaws, the President has the power to appoint committees from among the membership from time to time as he may, in his discretion, is appropriate to assist in the conduct of the affairs of the Association.

H. The Board of Directors has determined that it would be desirable and in the best interests of the Association and its members to create a committee (the "Special Litigation Committee") of disinterested persons to assist the Board with respect to all pending litigation and arbitration involving FOA, its current and former Board members, Gordon Properties, Gordon Residential, and CSI (collectively, the "Litigation").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors hereby creates the Special Litigation Committee.
2. The Board appoints Betty Gilliam, Alec Zoghaib, and Jane Brungart to serve as members of the Special Litigation Committee. The Board finds that each member of the committee is a disinterested person with respect to the Litigation. In the event of any vacancy on the Special Litigation Committee, the President is authorized to appoint a replacement who is a disinterested person with respect to the Litigation.
3. The Board of Directors delegates to the Special Litigation Committee all the Board's power and authority to investigate and determine the Association's position with respect to the Litigation. In so doing, the Special Litigation Committee shall act in the best interests of the Association as a whole and not in the interest of any individual member or group of members.
4. The Board authorizes the Special Litigation Committee to select and engage one or more special litigation counsel to represent and advise the committee and to otherwise assist the committee in carrying out its responsibilities under this resolution; *provided*, however, that any counsel so engaged may not have represented any party to the Litigation at any time after July 1, 2006.
5. The Board authorizes the Special Litigation Committee to select and engage such other consultants, advisors, and agents as the committee deems necessary or advisable in connection with fulfilling its responsibilities under this resolution.

6. The Board authorizes the Special Litigation Committee to enter into such engagement agreements and other contracts as the committee deems necessary or advisable with respect to the retention and compensation of such counsel, consultants, advisors, agents, and accountants; that the Association is authorized to pay, and shall pay, all reasonable fees, expenses, and disbursements of such counsel, consultants, advisors, agents, and accountants; that any such engagement agreement or other contract is approved, ratified and adopted by the Board of Directors; and that the officers of the Association are hereby authorized and directed to execute and deliver, in the name and on behalf of the Association, any such engagement agreement or other contract. In so doing, the Special Litigation Committee shall act at all times in a fiscally responsible manner.
7. The Board hereby authorizes and directs the directors, officers, employees, accountants, and advisors of the Association to assist the Special Litigation Committee and provide to the committee, each member thereof, and any such counsel, consultant, advisor, agent, or accountant, and their designees, such information and material to the extent requested by the Special Litigation Committee.
8. The Board hereby authorizes the officers of the Association to take all such actions and to perform any and all acts (including execution, filing, and delivery of any and all instruments and documents) that they deem necessary or appropriate to effectuate the purpose and intent of this resolution.

RESOLUTION ACTION SHEET

Administrative Resolution No.: 2012-02

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
President Bryan Sells	<u>✓</u>	<u> </u>	<u> </u>
Vice President Elizabeth Greenwell	<u>✓</u>	<u> </u>	<u> </u>
Secretary Lucia Hadley	<u> </u>	<u>✓</u>	<u> </u>
Director Dennis Howland	<u>✓</u>	<u> </u>	<u> </u>
Director Dr. F.J. Pepper	<u> </u>	<u>✓</u>	<u> </u>
Director Lindsay Wilson	<u>✓</u>	<u> </u>	<u> </u>
Director Alex Zoghaib	<u> </u>	<u>✓</u>	<u> </u>

Adopted by the Board of directors on this 24th day of June, 2012

Attest: 
Secretary

Date: 10/16/12

**APPENDIX TO EXAMINER'S REPORT:
DOC 3**

FIRST OWNERS' ASSOCIATION
BOARD OF DIRECTORS

ADMINISTRATIVE RESOLUTION NO. 2012-03

"APPOINTING SPECIAL LITIGATION COMMITTEE"

RECITALS

WHEREAS:

- A. The First Owners' Association, Inc. ("FOA" or the "Association") is engaged in pending litigation and arbitration with Gordon Properties LLC ("Gordon Properties") and Gordon Residential Holdings LLC ("Gordon Residential"), each of which is a member of the Association, and with Condominium Services, Inc. ("CSI"), a former managing agent of the Association.
- B. The United States Bankruptcy Court for the Eastern District of Virginia has found that the Association, acting through its former Board of Directors, willfully violated the United States Bankruptcy Code by denying Gordon Properties its right to vote at FOA's 2010 annual meeting. *See Gordon Properties, LLC v. First Owners' Association of Forty Six Hundred Condominium, Inc. (In re Gordon Properties, LLC)* 460 B.R. 681 (Bankr. E.D. Va. 2011).
- C. The individual members of FOA's former Board of Directors are the defendants in a pending lawsuit brought against them by Gordon Properties.
- D. Two members of FOA's current Board of Directors, Lucia Hadley and F.J. Pepper, are among those individual members of FOA's former Board of Directors who have been sued by Gordon Properties and whose conduct, together with other members of FOA's former Board of Directors, was found to be a willful violation of law.
- E. Four other members of FOA's current board of directors, Elizabeth Greenwell, Dennis Howland, Bryan Sells, and Lindsay Wilson, are affiliated with Gordon Properties, Gordon Residential, and CSI.
- F. Under Article V, Section 3 of the Association's Bylaws, the Board of Directors has all the powers and duties necessary for the administration of the affairs of the

Association and the condominium project and may do all such acts and things as are not reserved to the members.

- G. Under Article VI, Section 4 of the Association's Bylaws, the President has the power to appoint committees from among the membership from time to time as he may, in his discretion, is appropriate to assist in the conduct of the affairs of the Association.
- H. The Board of Directors has determined that it would be desirable and in the best interests of the Association and its members to create a committee (the "Special Litigation Committee") of disinterested persons to assist the Board with respect to all pending litigation and arbitration involving FOA, its current and former Board members, Gordon Properties, Gordon Residential, and CSI (collectively, the "Litigation").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Directors hereby creates the Special Litigation Committee.
2. The Board appoints Betty Gilliam, Alec Zoghaib, and Jane Brungart to serve as members of the Special Litigation Committee. The Board finds that each member of the committee is a disinterested person with respect to the Litigation. In the event of any vacancy on the Special Litigation Committee, the President is authorized to appoint a replacement who is a disinterested person with respect to the Litigation.
3. The Board of Directors delegates to the Special Litigation Committee all the Board's power and authority to investigate and determine the Association's position with respect to the Litigation. In so doing, the Special Litigation Committee shall act in the best interests of the Association as a whole and not in the interest of any individual member or group of members.
4. The Board authorizes the Special Litigation Committee to select and engage one or more special litigation counsel to represent and advise the committee and to otherwise assist the committee in carrying out its responsibilities under this resolution; *provided*, however, that any counsel so engaged may not have represented any party to the Litigation at any time after July 1, 2006.
5. The Board authorizes the Special Litigation Committee to select and engage such other consultants, advisors, and agents as the committee deems necessary or advisable in connection with fulfilling its responsibilities under this resolution.

6. The Board authorizes the Special Litigation Committee to enter into such engagement agreements and other contracts as the committee deems necessary or advisable with respect to the retention and compensation of such counsel, consultants, advisors, agents, and accountants; that the Association is authorized to pay, and shall pay, all reasonable fees, expenses, and disbursements of such counsel, consultants, advisors, agents, and accountants; that any such engagement agreement or other contract is approved, ratified and adopted by the Board of Directors; and that the officers of the Association are hereby authorized and directed to execute and deliver, in the name and on behalf of the Association, any such engagement agreement or other contract. In so doing, the Special Litigation Committee shall act at all times in a fiscally responsible manner.
7. The Board hereby authorizes and directs the directors, officers, employees, accountants, and advisors of the Association to assist the Special Litigation Committee and provide to the committee, each member thereof, and any such counsel, consultant, advisor, agent, or accountant, and their designees, such information and material to the extent requested by the Special Litigation Committee.
8. The Board hereby authorizes the officers of the Association to take all such actions and to perform any and all acts (including execution, filing, and delivery of any and all instruments and documents) that they deem necessary or appropriate to effectuate the purpose and intent of this resolution.

RESOLUTION ACTION SHEET

Administrative Resolution No.: 2012-02

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
President Bryan Sells	<u>✓</u>	<u> </u>	<u> </u>
Vice President Elizabeth Greenwell	<u>✓</u>	<u> </u>	<u> </u>
Secretary Lucia Hadley	<u> </u>	<u>✓</u>	<u> </u>
Director Dennis Howland	<u>✓</u>	<u> </u>	<u> </u>
Director Dr. F.J. Pepper	<u> </u>	<u>✓</u>	<u> </u>
Director Lindsay Wilson	<u>✓</u>	<u> </u>	<u> </u>
Director Alex Zoghaib	<u> </u>	<u>✓</u>	<u> </u>

Adopted by the Board of directors on this 24th day of June, 2012

Attest: _____
Secretary

Date: _____

**APPENDIX TO EXAMINER'S REPORT:
DOC 4**

10/11/12 sent to
Lindsay for complete
& sign

FIRST OWNERS' ASSOCIATION OF FORTY SIX HUNDRED CONDOMINIUM, INC

ADMINISTRATIVE RESOLUTION 2012-06

REPLACES ADMINISTRATIVE RESOLUTION 2012-05

October 3, 2012

APPOINTING SPECIAL LITIGATION COMMITTEE

WHEREAS:

- A. The First Owners' Association, Inc. ("FOA" or the "Association") is engaged in pending litigation and arbitration with Gordon Properties LLC ("Gordon Properties") and Gordon Residential Holdings LLC ("Gordon Residential"), each of which is a member of the Association, and with Condominium Services, Inc. ("CSI"), a former managing agent of the Association.
- B. The United States Bankruptcy Court for the Eastern District of Virginia has found that the Association, acting through its former Board of Directors, willfully violated the United States Bankruptcy Code by denying Gordon Properties its right to vote at FOA's 2010 annual meeting. *See Gordon Properties, LLC v. First Owners' Association of Forty Six Hundred Condominium, Inc. (In re Gordon Properties, LLC)* 460 B.R. 681 (Bankr. E.D. Va. 2011).
- C. The individual members of FOA's former Board of Directors are the defendants in a pending lawsuit brought against them by Gordon Properties.
- D. One or more members of FOA's current Board of Directors are among those individual members of FOA's former Board of Directors who have been sued by Gordon Properties and whose conduct, together with other members of FOA's former Board of Directors, was found to be a willful violation of law.
- E. One or more members of FOA's current board of directors are affiliated with Gordon Properties, Gordon Residential, and CSI.
- F. Under Article V, Section 3 of the Association's Bylaws, the Board of Directors has all the powers and duties necessary for the administration of the affairs of the Association and the condominium project and may do all such acts and things as are not reserved to the members.

- G. Under Article VI, Section 4 of the Association's Bylaws, the President has the power to appoint committees from among the membership from time to time as he may, in his discretion, is appropriate to assist in the conduct of the affairs of the Association.
- H. The Board of Directors has determined that it would be desirable and in the best interests of the Association and its members to create a committee (the "Special Litigation Committee") of disinterested persons to direct and manage all pending litigation, arbitration, and bankruptcy proceedings involving FOA, its current and former Board members, Gordon Properties, Gordon Residential, and CSI (collectively, the "Litigation").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board hereby repeals and rescinds any and all prior resolutions creating a Special Litigation Committee.
2. The Board of Directors hereby creates the Special Litigation Committee.
3. The Board appoints Jane Brungart, Martina Hernandez, and William Reichenbach to serve as members of the Special Litigation Committee. The Board finds that each member of the committee is a disinterested person with respect to the Litigation. In the event of any vacancy on the Special Litigation Committee, the President is authorized to appoint a replacement who is a disinterested person with respect to the Litigation.
4. The Board of Directors delegates to the Special Litigation Committee all of the Board's power and authority to direct and manage and determine the Association's position with respect to the Litigation, including, but not limited to, the power to direct FOA's counsel, and to settle the Litigation on terms deemed reasonable and in the best interest of the Association. In so doing, the Special Litigation Committee shall act in the best interests of the Association as a whole and not in the interest of any individual member or group of members.
5. The Board authorizes the Special Litigation Committee to select and engage one or more counsel to represent the Association in the Litigation and to represent and otherwise assist the Special Litigation Committee in carrying out its responsibilities under this resolution; *provided*, however, that any counsel so engaged may not have represented any party to the Litigation between July 1, 2006, and June 15, 2012.

6. The Board authorizes the Special Litigation Committee to select and engage such other consultants, advisors, and agents as the Special Litigation Committee deems necessary or advisable in connection with fulfilling its responsibilities under this resolution.
7. The Board authorizes the Special Litigation Committee to execute and enter into such engagement agreements and other contracts on behalf of the Association or on their own behalf as the Special Litigation Committee deems necessary or advisable with respect to the retention and compensation of such counsel, consultants, advisors, agents, and accountants; that the Association is authorized to pay, and shall pay, all reasonable fees, expenses, and disbursements of such counsel, consultants, advisors, agents, and accountants; that any such engagement agreement or other contract is approved, ratified and adopted by the Board of Directors; and that the officers of the Association are hereby authorized and directed to execute and deliver, in the name and on behalf of the Association, any such engagement agreement or other contract. In so doing, the Special Litigation Committee shall act at all times in a fiscally responsible manner.
8. The Board hereby authorizes and directs the directors, officers, employees, accountants, and advisors of the Association to assist the Special Litigation Committee and provide to the Special Litigation Committee, each member thereof, and any such counsel, consultant, advisor, agent, or accountant, and their designees, such information and material to the extent requested by the Special Litigation Committee.
9. The Board hereby authorizes the officers of the Association to take all such actions and to perform any and all acts (including execution, filing, and delivery of any and all instruments and documents) that they deem necessary or appropriate to effectuate the purpose and intent of this resolution.

RESOLUTION ACTION SHEET
ADMINISTRATIVE RESOLUTION NO 2012-06
REPLACES ADMINISTRATIVE RESOLUTION 2012-05
OCTOBER 3, 2012
APPOINTING SPECIAL LITIGATION COMMITTEE

NAME	YES	NO	ABSTAIN	ABSENT
_____ PRESIDENT BRYAN SELLS	_____	_____	_____	_____
_____ VICE PRESIDENT ELIZABETH GREENWELL	_____	_____	_____	_____
_____ SECRETARY/TREASURER LINDSAY WILSON	_____	_____	_____	_____
_____ DIRECTOR LUCIA HADLEY	_____	_____	_____	_____
_____ DIRECTOR JONATHAN HALLS	_____	_____	_____	_____
_____ DIRECTOR MARTINA HERNANDEZ	_____	_____	_____	_____
_____ DIRECTOR BILL REICHENBACH	_____	_____	_____	_____
ATTEST:				
_____ SECRETARY	_____ DATE			

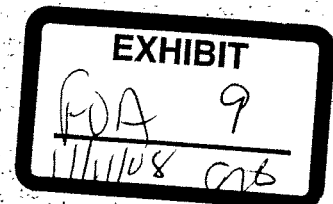
**APPENDIX TO EXAMINER'S REPORT:
DOC 5**

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EXHIBIT E

BY-LAWS OF THE
OWNERS' ASSOCIATION

PORTY SIX HUNDRED CONDOMINIUM



BOOK 811 PAGE 420

EXHIBIT E

BY-LAWS
OF THE
OWNERS' ASSOCIATION
OF FORTY SIX HUNDRED CONDOMINIUM

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EXHIBIT E

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BY-LAWS
OF THE
OWNERS' ASSOCIATION

OF FORTY SIX HUNDRED CONDOMINIUM

ARTICLE I

Name and Location

Section 1. Name and Location. The name of this Corporation is the "Owners' Association of FORTY SIX HUNDRED CONDOMINIUM, INC. (hereinafter referred to as the "Owners' Association"). Its principal office is located at 4600 Duke Street, Alexandria, Virginia.

Section 2. These By-Laws are established in contemplation of and pursuant to Article 55, §79.39, Code of Virginia (1950) as amended and for the administration of the Building or Buildings constituted into a Condominium Project known as FORTY SIX HUNDRED CONDOMINIUM which is located at the address set forth in Section 1 of this ARTICLE.

ARTICLE II

Definitions

Section 1. Declaration. "Declaration" as used herein means that certain Declaration made the 10th day of November, 1975, by FORTY SIX HUNDRED CORPORATION pursuant to Article 55, §79.39 through and including §79.103, Code of Virginia (1950), as amended, by which certain described premises are submitted to a Condominium Project and which Declaration is recorded among the Land Records for the City of Alexandria, Virginia.

Section 2. Other Definitions. Unless it is plainly evident from the context that a different meaning is intended all other terms used herein shall have the same meaning as they are defined to have in the Declaration or in Article 55, §79.41, Code of Virginia (1950) as amended. The word "Declarant" as used hereinafter refers to FORTY SIX HUNDRED CORPORATION. Unless otherwise indicated hereinafter, the term "Common Elements" shall include both "General" and "Limited" Common Elements.

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ARTICLE III

Membership

Section 1. Members. Every person, group of persons, corporation, trust or other legal entity, or any combination thereof, which owns a Condominium Unit within the Condominium Project shall be a member of the Owners' Association, provided, however, that any person, group of persons, corporation, trust, or other legal entity, or any combination thereof, which holds such interest solely as security for the performance of an obligation shall not be a member. Every member shall remain a member of said Association until such time as his ownership ceases, for any reason, at which time his membership in said Association shall automatically cease.

Section 2. Membership Certificates. In the event the Board of Directors considers it necessary or appropriate to issue membership certificates or the like, then each such membership certificate shall state that the Owners' Association is organized under the laws of the State of Virginia, the name of the registered holder or holders of the membership represented thereby, and shall be in such form as shall be approved by the Board of Directors. Membership certificates shall be consecutively numbered, bound in one or more books, and shall be issued therefrom upon certification as to the transfer of title to the Condominium Unit to which such membership is appurtenant. Membership is not otherwise transferable. Every membership certificate shall be signed by the President or a Vice President and the Secretary or an Assistant Secretary and shall be sealed with the corporate seal.

Section 3. Lost Certificates. The Board of Directors may direct that a new certificate or certificates be issued in place of any certificate or certificates previously issued by the Owners' Association and alleged to have been destroyed or lost, upon the making of an affidavit of that fact by the person claiming the membership certificate to be lost or destroyed. When authorizing such issuance of a new certificate or certificates, the Board of Directors may, in its discretion, and as a condition precedent to the issuance thereof, require the registered holder of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and to give the Owners' Association a bond in such sum as the Board of Directors may require as an indemnity against any claim that may be made against the Owners' Association.

Section 4. Liquidation Rights. In the event of any voluntary or involuntary dissolution of the Owners' Association, each member of the Owners' Association shall be entitled to receive out of the assets of the Owners' Association available for distribution to the members an amount equal to that proportion of such assets which is shown in Exhibit D, to the Declaration.

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ARTICLE IV

Meeting of Members

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the Owners' Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meeting. The first annual meeting of the members of the Owners' Association shall be held within one hundred eighty (180) days after formation of the Owners' Association, as set forth in the "Declaration" of this Condominium Project. Thereafter, the annual meetings of the members of the Owners' Association shall be held on the first Wednesday of October each succeeding year. At such meeting, there shall be elected by ballot of the members a Board of Directors in accordance with the requirements of Section 5 of ARTICLE V of these By-Laws. The members may also transact such other business of the Owners' Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the members as directed by resolution of the Board of Directors or upon a petition signed by members representing at least twenty percent (20%) of the total votes of the Project having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of members representing four-fifths (4/5ths) of the votes present, either in person or by proxy.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to the unit owners as members of record, by U. S. mail return receipt requested, at his address as it appears on the membership book of the Owners' Association, or if no such address appears, at his last known place of address, at least twenty-one (21) days but not more than ninety (90) days prior to such annual meeting, and seven (7) days prior to such special meeting. Service may be accomplished by the delivery of any such notice to the member at his Condominium in the same manner. Notice may be delivered by the Secretary or his designate, provided a receipt of acceptance of such notice is obtained. Attendance by a member at any meeting of the members shall be a waiver of notice by him of the time, place and purpose thereof.

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Section 5. Quorum. The presence, either in person or by proxy, of members representing at least a majority of the total votes of the Condominium Project shall be requisite for, and shall constitute a quorum for the transaction of any business which affects the rights and duties of all unit owners. For any business which may result in an assessment, amendment of interest in a Limited Common Element, right or duty of fewer than all the unit owners, the presence, either in person or by proxy, of members of representing a majority of the votes of the units so affected shall constitute a quorum.

Section 6. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Voting. At every meeting of the members, each member present, in person or by proxy, shall have the right to cast the vote assigned to his Unit by Exhibit D of the Declaration on each question for each membership which he owns. The vote of the members representing a majority of the total votes of the Condominium Project, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Articles of Incorporation, or of the Declaration or of these By-Laws, a different vote is required, in which case such express provision shall govern and control. Notwithstanding the foregoing statement any question raised at a meeting which may result in an assessment, amendment of interest in a Limited Common Element, right or duty of fewer than all unit owners may be voted upon only by those unit owners who will or may be so affected and a majority vote shall carry the question. No amendment to any Condominium instruments shall alter any rights or obligations with respect to any Limited Common Elements without the consent of all unit owners adversely affected thereby. The vote of any member which is possessed by more than one person may be exercised by any one of them present at any meeting. If more than one owner of a unit is present, the vote may be cast by unanimous consent of said owners or by any one of them, provided no objections or protest by any other owner of such membership is noted at such meeting. No member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors who is shown on the books or management account of the Owners' Association to be more than thirty (30) days delinquent in any payment due the Owners' Association.

Section 8. Proxies. A member may appoint any other person or the Declarant as his proxy. Any proxy must be in writing and dated, the signatures of the owners properly acknowledged and be filed with the Secretary in form approved by the Board of Directors before the appointed time of each meeting. Unless limited by its terms, any proxy shall terminate upon the adjournment of the meeting next following the creation of the proxy or until sooner revoked by a written notice of revocation filed with the Secretary or by the death of the member.

Section 9. Order of Business. The order of business at all regularly scheduled meetings of the regular members shall be as follows:

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- (a) Roll call and certification of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers, if any.
- (e) Reports of committees, if any.
- (f) Election of inspectors of election.
- (g) Election of directors.
- (h) Unfinished business.
- (i) New business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE V

Directors

Section 1. Numbers and Qualification. The affairs of the Owners' Association shall be governed by the Board of Directors (hereinafter sometimes referred to as "Board of Directors") composed of at least seven (7) natural persons who shall (after the first annual meeting of members) be members of the Owners' Association. At least one of the Directors, but not more than two, shall be owners of Commercial Condominium Units or if no Commercial Units have been conveyed, owners of the convertible space.

Section 2. Initial Directors. The initial Directors shall be selected by the Declarant and need not be members of the Owners' Association. Such Directors shall act from the date upon which the Declaration is recorded among the Land Records for the City of Alexandria, Virginia, until the first annual meeting of the members or until such time as their successors are duly chosen and qualified.

Section 3. Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Owners' Association and the Condominium Project and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the members. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

(a) To provide for the care, upkeep and surveillance of the Condominium Project and the Common Elements and services in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(b) To establish and provide for the collection of assessments and/or carrying charges from the members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(c) To provide for the designation, hiring and/or dismissal of the personnel necessary for the good working order of the Condominium Project and for the proper care

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of the Common Elements and to provide services for the Project in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(d) To promulgate and enforce such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the Project and the use of the Common Elements as are designated to prevent unreasonable interference with the use and occupancy of the Condominium Project and of the Common Elements by the members, all of which shall be consistent with law and the provisions of these By-Laws and the Declaration,

(e) To authorize, in their discretion, refunds from excess residual receipts when and as reflected in the annual report.

(f) To establish a general operating reserve and/or a reserve for replacement or depreciation of Common Elements and to provide for the collection of such amounts.

(g) To comply with the provisions of the Declaration, these By-Laws, and any amendments thereto.

(h) To have the irrevocable power as attorney-in-fact on behalf of all unit owners and their successors in title to grant easements to the Common Elements and accept easements benefiting the Condominium Project.

(i) Establish and maintain bank accounts for the control of funds collected and disbursed as herein provided.

Section 4. Management Agent. The Board of Directors may, by contract in writing, delegate any of its duties, powers or functions to a management organization (Management Agent). The Owners' Association and the Board of Directors shall not be liable for any omission or improper exercise by the Management Agent of any such duty, power or function so delegated. Upon the expiration of two years from the creation of the Condominium, the Board of Directors shall ratify any management agreement entered into within that time period or terminate such agreement.

Section 5. Election and Term of Office. The term of the Directors named herein and in the Articles of Incorporation shall expire when their successors have been elected at the first annual meeting of members and are duly qualified. Such meeting shall be chaired by an officer, agent, or designate of the management agent but shall not be one of the initial Directors. At the first annual meeting of the members, the term of office of the four (4) elected Directors receiving the greatest number of votes shall be fixed for two (2) years. The term of office of the elected Directors receiving the fifth, sixth, and seventh greatest number of votes shall be fixed at one (1) year. In the event of a tie in the number of votes for the seventh Director, a run-off shall be held among those tying for the position. At the expiration of the initial term of office of each respective elected Director, his successor shall be elected to serve a term of two (2) years. The Directors shall hold office until their successors have been elected and hold their first meeting.

Section 6. Vacancies. Vacancies among the elected Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected by all the members at the next annual meeting to serve out the unexpired portion of the term.

Section 7. Removal of Directors. At a regular or special meeting duly called, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than thirty (30) days delinquent in payment of any Assessments and/or carrying charges due the Owners' Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this ARTICLE. An appointed Director may be removed at any time and only by the party or institution having appointed him.

Section 8. Compensation. No compensation shall be paid to Directors for their services as Directors. After the first annual meeting of the members, no remuneration shall be paid to any Director who is also a member of the Owners' Association for services performed by him for the Owners' Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 9. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least thirty (30) days prior to the day named for such meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on ten (10) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

Section 12. Additional Notice Requirements. Copies of all notices of regular and special meetings shall be

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sent to the Managing Agent and to one agent appointed for receipt of such notice by all holders of first mortgages or first deeds of trust. The failure to give the notice required by this section shall invalidate any action taken at such meeting.

Section 13. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director or any person required to receive notice under Section 12 of ARTICLE V, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the filing of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 14. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. Notice of such adjournment shall be provided in writing to the absent Directors at their Unit in the Condominium Project. At any subsequent meeting called pursuant to this sub heading, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 15. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

Section 16. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Owners' Association handling or responsible for corporate or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Owners' Association.

ARTICLE VI

Officers

Section 1. Designation. The principal officers of the Owners' Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The President and Vice President shall be members of the Owners' Association. If the owner of a Commercial Condominium Unit who is serving as President or Vice President of the Owners' Association disposes of his Unit for a term greater than six months he may continue to serve as such officer. The owner of either a Residential or Commercial Condominium who conveys his Unit in fee automatically terminates his position as President or Vice President.

A President or Vice President of the Owners' Association who is a Director, Officer, trustee or partner of an owner of a Unit who is not a natural person and ceases such relationship with the unit owner shall automatically be terminated as President or Vice President of the Owners' Association. The Secretary and Treasurer of the Owners' Association need not be members of the Owners' Association. The Directors may appoint an assistant Secretary and an assistant Treasurer and such other officers as in their judgment may be necessary. The office of Secretary and Treasurer may be filled by the same person.

Section 2. Election of Officers. The officers of the Owners' Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Owners' Association. He shall preside at all meetings of the members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of a corporation, including but not limited to the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Owners' Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be delegated to him by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Owners' Association; he shall have custody of the seal of the Owners' Association; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Owners' Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Owners' Association in such depositories as may from time to time be designated by the Board of Directors.

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ARTICLE VII

Liability and Indemnification
of Officers and Directors

Section 1. Liability and Indemnification of Officers and Directors. The Owners' Association shall indemnify every officer and Director of the Owners' Association against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Owners' Association) to which he may be made a party by reason of being or having been an officer or Director of the Owners' Association whether or not such person is an officer or Director at the time such expenses are incurred. The officers and Directors of the Owners' Association shall not be liable to the members of the Owners' Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Officers and Directors of the Owners' Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Owners' Association or the Condominium Project (except to the extent that such officers or Directors may also be owners of Condominium Units) and the Owners' Association shall indemnify and forever hold each such officer and Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification that an officer or Director of the Owners' Association is entitled, shall apply to a former officer or Director of the Owners' Association and his heirs, executors, and/or administrator. Such right of indemnification shall not be deemed exclusive of any rights to which he may be entitled under any by-law, agreement, vote of stockholders, or otherwise.

Section 2. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Owners' Association and the Condominium Project. No contract or other transaction between the Owners' Association and one or more of its Directors, or between the Owners' Association and any other corporation, firm or association (including the Declarant) in which one or more of the Directors of this Owners' Association are Directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or any committee thereof which authorized or approves the contract or transaction, or because his or their votes are counted for such purpose, if any, of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) The fact of the common directorate or interest is disclosed or known to the members, or a majority thereof,

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and they approve or ratify the contract of transaction in good faith by a vote sufficient for the purpose; or

(c) The contract or transaction is commercially reasonable to the Owners' Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

ARTICLE VIII

Operation and Management of the Project

Section 1. Management and Common Expenses. The Owners' Association, acting by and through its Board of Directors, shall manage, operate and maintain the Condominium Project and, for the benefit of the Condominium Units and the owners thereof, shall enforce the provisions hereof and shall pay out of the Common Expense fund herein elsewhere provided for, the following:

(a) The cost of providing heat, air conditioning, water, sewer, garbage and trash collection, electrical, gas and other necessary utility services for the Common Elements, to the extent that the same are not separately metered or billed to each Condominium Unit, and for the Condominium Units; the costs of operating and maintaining any and all television and radio distribution systems, and recreational facilities, all or any of which may be done directly or through an independent contractor.

(b) The cost of fire and extended liability insurance on the Condominium Project, the cost of a master liability policy as described in the Declaration and the cost of such other insurance as the Owners' Association may effect.

(c) The cost of the services of a firm to manage the Project (Managing Agent) to the extent deemed advisable by the Owners' Association together with the services of such other personnel as the Board of Directors of the Owners' Association shall consider necessary for the operation of the Condominium Project.

(d) The costs of providing such legal and accounting services as may be considered necessary to the operation of the Condominium Project.

(e) The cost of painting, maintaining, replacing, repairing and landscaping the Common Elements and such furnishings and equipment for the Common Elements as the Board of Directors shall determine are necessary and proper, and the Board of Directors shall have the exclusive right and duty to acquire the same; provided, however that nothing herein contained shall require the Owners' Association to paint, repair or otherwise maintain the interior of any Condominium or any fixtures, appliances or equipment located therein.

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(f) The cost of any and all other materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like which the Owners' Association is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary or proper for the operation of the Common Elements; provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular Condominium or Condominiums, the cost thereof shall be specially assessed to the owner or owners thereof in the manner provided in subsection (g) of Section 1 of this ARTICLE.

(g) The cost of the maintenance or repair of any Condominium Unit in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Elements or to preserve the appearance or value of the Condominium Project or is otherwise in the interest of the general welfare of all owners of Condominium Units; provided, however, that no such maintenance or repair shall be undertaken without reasonable written notice to the owner of the Condominium Unit proposed to be maintained and provided further that the cost thereof shall be assessed against the Condominium Unit which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then owner of said Condominium Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said owner in all respects as provided in ARTICLE IX of these By-Laws.

(h) Any amount necessary to discharge any lien or encumbrance levied against the Condominium Project, or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against the Common Elements rather than the interest therein of the owner of any individual Condominium Unit.

(i) Any amount necessary to pay real estate taxes assessed against the property described in Exhibit A of the Declaration or other governmental charges of whatever nature assessed on or against the Common Elements of the Condominium Project, and all other taxes and assessments levied against the Owners' Association or upon any property which it may own or it is otherwise required to pay, if any.

(j) Any amount deemed necessary or desirable by the Board of Directors to be placed in a reserve for replacement of any Common Elements.

Section 2. Management Agent. The Board of Directors shall employ for the Owners' Association a management organization (the "Management Agent") at a rate of compensation and such other terms and conditions as shall be established by the Board of Directors to perform such duties and services as the Board of Directors shall from time to time authorize in writing, which may include, but not necessarily be limited to, the duties set out in ARTICLE V subsections (a) through (d) of Section 3 and subsections (a) through (j) of Section 1 of this ARTICLE. The Owners' Association shall not change Management Agents or undertake self-management, without the prior affirmative vote of members representing three-fourths (3/4ths) of the votes of the Residential and Commercial Unit owners present at any meeting of the members duly called for such

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purpose except for the provisions of ARTICLE V, Section 4 herein.

Section 3. Duty to Maintain.

A. Residential and Commercial Units. Except for maintenance requirements herein imposed upon the Owners' Association, if any, the owner of any Residential or Commercial Condominium shall, at his own expense, maintain the interior of his Condominium and any and all equipment, appliances, or fixtures therein situate, in good order, condition and repair, and in such clean and sanitary condition as may at any time be necessary to maintain the good appearance of his Condominium Unit and shall, at his own expense, maintain, repair or replace any plumbing and electrical fixtures, outlets and receptacles, lighting fixtures, refrigerators, freezers, dishwashers, disposals, ranges, range hoods, and/or other equipment that may be in such Condominium Unit.

B. Street Front Commercial Units. The owner of a Street Front Commercial Unit shall maintain it and any improvements thereon at his own expense, in good order, condition, and repair, and in such clean and sanitary condition as may at any time be necessary to maintain the good appearance of his Condominium Unit.

Section 4. Windows and Doors. The owner of any Condominium shall at his own expense, clean and maintain the interior surfaces of all windows of the Condominium Unit.

Section 5. Access at Reasonable Times. For the purpose solely of performing any of the repairs or maintenance required or authorized by these By-Laws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Owners' Association through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the owner or occupant, to enter any Condominium Unit at any hour considered to be reasonable under the circumstances.

Section 6. Easements for Utilities and Related Purposes. The Owners' Association is authorized and empowered to grant such licenses, easements and/or rights-of-way for sewer lines, water lines, television and radio distribution systems, electrical cables, telephone cables, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities to the Condominium Project as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and enjoyment of the Common Elements or for the preservation of the health, safety, convenience and/or welfare of the owners of the Condominiums or the Declarant.

Section 7. Limitation of Liability. The Owners' Association shall not be liable for any failure of any services to be obtained by the Owners' Association or paid for out of the Common Expense funds, including, but not limited to, those enumerated in ARTICLE VIII, Section 1 (a) hereof, or for injury or damage to person or property caused by the Elements or by the owner of any Condominium Unit, or any other person, or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Owners' Association shall not be liable to the owner of any Condominium Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements, including but not limited to owner storage areas, pool and

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sauna locker rooms and other appurtenances. Except as hereinafter provided, no damages shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, or to any Condominium Unit or from any action taken by the Owners' Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE IX

Assessments

Section 1. Annual Assessments and Common Expenses.

Each Residential and Commercial member shall pay in advance to the Owners' Association a monthly sum (hereinafter sometimes referred to as "Assessments") equal to one-twelfth (1/12th) of the member's proportionate share of the sum required by the Owners' Association, as estimated by its Board of Directors, to meet its annual expenses, including but in no way limited to the following (all of which are sometimes elsewhere herein referred to as "Common Expense"):

(a) The cost of all operating expenses of the Condominium Project and services furnished, including charges by the Owners' Association for facilities and services furnished by it and all costs required to be paid by the Owners' Association as set forth in ARTICLE VIII, Section 1 (a) et. seq. of these By-Laws.

(b) The cost of funding all reserves established by the Owners' Association, including when appropriate, a general operating reserve and/or a reserve for replacements; and

(c) The estimated cost of repairs, maintenance and replacements of the Condominium Project to be made by the Owners' Association.

The Board of Directors shall determine the amount of the Assessment annually, but may do so at more frequent intervals should circumstances so require.

The Assessments shall be based on the percentages of responsibility set forth in Exhibit D to the Declaration.

The Board of Directors of the Owners' Association shall make reasonable efforts to fix the amount of the Assessment against each Condominium Unit for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the membership and Assessments applicable thereto which shall be kept in the office of the Owners' Association and shall be open to inspection by any owner upon reasonable notice to the Board. Written notice of the Assessment shall thereupon be sent to the members. The omission of the Board of Directors, before the expiration of any Assessment period, to fix the Assessments hereunder for that or the next period, shall not be

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deemed a waiver or modification in any respect of the provisions of this ARTICLE, or a release of any member from the obligation to pay the Assessment, or any installment thereof, for that or any subsequent Assessment period, but the Assessment fixed for the preceding period shall continue until a new Assessment is fixed. No member may exempt himself from liability for Assessments by a waiver of the use or enjoyment of any of the Common Elements appurtenant to it his Unit or by abandonment of any Unit belonging to him.

Each Residential and Commercial owner shall pay the Assessment within fifteen days of the receipt of the Notice of Assessment.

Section 2. Special Assessments. In addition to the regular Assessments authorized by this ARTICLE, the Owners' Association may levy in any Assessment year a special Assessment or Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement located upon the Project, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate, provided that any such Assessment shall have the assent of the members representing two-thirds (2/3rds) of the total votes of those unit owners who will be assessed. A meeting of the members shall be duly called for this purpose, written notice of which shall be sent to all members at least seven (7) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of this meeting.

If the Assessment is for the capital improvement of a Limited Common Element, such Special Assessment shall be levied only against those affected owners and in proportion to their interest therein.

Section 3. Reserve for Replacements. The Owners' Association shall establish and maintain a reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be deposited in a special account with an institution the accounts of which are insured by an agency of the United States of America (the Board of Directors may authorize the depositing of funds in such an institution in excess of the limits of such insurance if any portion of such funds are insured), or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. Such reserve shall be designated as applicable to one of the General or Limited Common Elements set out as a separate category in the Declaration and shall be drawn from Assessments on the Units to which the particular Common Element is appurtenant. The reserve for replacements may be expended only for the purpose of effecting the replacement of those Common Elements and equipment of the Project and for operating contingencies of a nonrecurring nature applicable thereto. The amounts required to be allocated to the reserve for replacements shall be considered an appurtenance of the Unit from which the Assessment was drawn and shall not be separately withdrawn, assigned or transferred or otherwise

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separated from the Unit to which it appertains and shall be deemed to be transferred with such Unit.

Section 4. Non-Payment of Assessment. Any Assessment levied pursuant to these By-Laws, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Condominium Unit or Condominium Units belonging to the member against whom such Assessment is levied and shall bind such Condominium Unit or Condominium Units in the hands of the then owner, his heirs, devisees, personal representatives and assigns, all in accordance with the provisions of Title 55 §79.84, Code of Virginia (1950) as amended. The personal obligation of the member to pay such Assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any Assessment levied pursuant to these By-Laws, or any installment thereof, may be maintained without foreclosing or waiving the lien herein and by the aforesaid statute created to secure the same.

Section 5. Remedies for Non-Payment of Assessment. Any Assessment levied pursuant to the Declaration or these By-Laws, or any installment thereof, which is not paid within the ten (10) days after it is due, shall bear interest at a rate not to exceed ten percent (10%) per annum, and the Owners' Association may bring an action at law against the member personally obligated to pay the same, or foreclose the lien against the Condominium Unit or Units then belonging to said member, in either of which events interest costs and reasonable attorneys' fees of not less than twenty percent (20%) of the sum claimed shall be added to the amount of each Assessment. The Owners' Association shall notify the holder of the first mortgage on any Condominium Unit for which any Assessment levied pursuant to these By-Laws becomes delinquent for a period in excess of thirty (30) days and in any other case where the owner of such Condominium Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 6. Assessment Certificates. The Owners' Association shall upon demand at any time furnish to any member liable for any Assessment levied pursuant to these By-Laws (or any other party legitimately interested in the same), a certificate in writing signed by an officer of the Owners' Association setting forth the status of said Assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any Assessment therein stated to have been paid. A charge not to exceed TEN DOLLARS (\$10.00) may be levied in advance by the Owners' Association for each certificate so delivered.

The Owners' Association shall, upon demand at any time furnish to any member who is reselling his Unit, a certificate in writing signed by an officer of the Owners' Association setting forth a statement of any capital expenditures anticipated by the Owners' Association within the current or succeeding two fiscal years and a statement of the status and amount of any reserve for replacement fund including the portion of such fund earmarked for any specified Project by the Board of Directors. A

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charge not to exceed TWENTY-FIVE DOLLARS (\$25.00) may be levied in advance by the Owners' Association for each certificate so delivered.

Section 7. Priority of Lien. The lien established by this ARTICLE and by Title 55, §79.84, Code of Virginia (1950) as amended, shall have preference over any other Assessments, liens, judgments or charges of whatever nature, except the following:

(a) General and special Assessments for real estate taxes on the Condominium Unit; and

(b) The liens of any mortgage duly recorded on said Condominium Unit after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said mortgage.

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any Assessment levied pursuant to these By-Laws upon any Condominium Unit in the Project shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to a sale or transfer of such Condominium Unit pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Condominium Unit from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment, which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein. This provision shall in no way defeat the right of said purchaser to a cause of action against the transferor for reimbursement of said Assessment.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or of the indebtedness secured thereby) shall join in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (or the indebtedness secured thereby) not otherwise entitled thereto.

Section 9. Additional Default. Any recorded first mortgage secured by a Condominium Unit in the Project shall provide that any default by the mortgagor in the payment of any Assessment levied pursuant to these By-Laws, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby) but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such first mortgage (or the indebtedness secured thereby) by reason of Section 7 of this ARTICLE shall not be altered, modified or diminished by reason of such failure.

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Section 10. Definition. As used in these By-Laws, the term "Mortgage" shall include deed of trust and term "holder" or "mortgagee" shall include the party secured by any deed of trust or any beneficiary thereof.

ARTICLE X

Use Restrictions

Section 1. Residential Condominium Unit. Condominium Units on Floors 5 through 16 shall be used for private residential purposes exclusively except for such temporary non-residential uses as may be permitted by the Board of Directors from time to time. Nothing in this Section, or hereinafter, shall be construed to prohibit the Declarant from the use of any Condominium Unit which Declarant owns for offices, promotion, marketing or display purposes as "model apartments" for the period of the easement to facilitate sales as set out in the Declaration or from leasing any Condominium Unit or Units which Declarant owns.

Section 2. Commercial Condominium Unit. The Condominium Units and convertible space on Floors 3 and 4 shall be used as Commercial Units except for the provisions herein relating to the Declarant's right to convert convertible space and the right of any owner, other than Declarant, of Commercial Units to convert such Units to Residential Units upon written notice to the Board. The Street-Front Commercial Units may be used for any purpose allowed by law.

Section 3. Financial Responsibility, etc. The right to use or occupy any Condominium Unit within the Project, reside therein permanently or otherwise, and the right to sell, lease or otherwise transfer or convey any Condominium Unit may be subject to such uniform objective standards relating to financial responsibility and/or character as may now or hereafter be set forth in these By-Laws. No such restriction shall be based upon race, religion, sex, age or place of national origin.

Section 4. Leasing. No Condominium Unit designated a Residential Unit shall be rented for transient or hotel purposes or, in any event, for any period less than six (6) months, nor shall any customary hotel services, such as room service, food and beverage service, maid service, laundry or bellboy service be furnished. No portion of and Residential Condominium Unit (other than the entire Condominium Unit) shall be leased for any period. Any lease shall contain a provision to the effect that the right of the tenant to use and occupy the Condominium Unit shall be subject and subordinate in all respects to the provisions of the Declaration and these By-Laws and to such rules and regulations relating to the use of the Common Elements, or other "house rules" as the Board of Directors may from time to time promulgate. The provisions of this subsection shall not apply to any institutional mortgagee of any Condominium Unit which comes into possession of the Unit as a result of a foreclosure sale or other judicial sale or as a result of any proceeding in lieu of foreclosure. The owner of a Commercial Unit must provide in any lease agreement that every tenant or subtenant shall comply in all respects to the Declaration, By-Laws, and rules and regulations promulgated by the Board of Directors.

Section 5. Prohibited Uses of Residential and Commercial Units.

(a) No noxious or offensive activity shall be carried on in any Residential or Commercial Condominium Unit nor shall anything be done or be permitted to remain in any Condominium Unit which may be or become a nuisance or annoyance to the other owners. Residents of FORTY SIX HUNDRED CONDOMINIUM shall exercise care not to disturb other residents with excessive noise.

(b) There shall be no obstruction of any Common Elements. Nothing shall be stored upon any Common Elements (excepting those areas designated for storage of personal property by the owners of the Condominiums) without the approval of the Board of Directors. Vehicular parking upon Limited Common Elements may be regulated or assigned by the Board of Directors consistent with the Declaration and these By-Laws.

(c) Nothing shall be done or maintained in any Condominium Unit or upon any Common Elements which will increase the rate of insurance on any Condominium Unit or any Common Elements, or result in the cancellation thereof, without the prior written approval of the Board of Directors. Nothing shall be done or maintained in any Condominium Unit or upon any Common Elements which would be in violation of any laws. No waste shall be committed upon any Common Elements.

(d) No structural alteration, construction, addition, or removal of any Residential or Commercial Condominium Unit or Common Elements shall be commenced or conducted except in strict accordance with the provisions of the Declaration and these By-Laws.

(e) No animals, livestock, poultry or birds, other than common household pets shall be kept or maintained in any Condominium Unit. No more than two cats or dogs or combination thereof shall be kept or maintained in any Unit. No common household pet shall be kept or maintained which weighs in excess of twenty-five (25) pounds. Common household pets shall not be kept, bred or maintained for commercial purposes in a Residential Condominium.

All pets must be registered with the Board of Directors and shall be the absolute responsibility of the respective unit owner. All dogs, while outside of any Unit shall remain on a leash and must be curbed. All pet owners shall be responsible for the removal of any excrement left by the pet on the Common Elements. Each pet owner is responsible for any damage caused to the Common Elements or to any other Unit by his pet.

(f) Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no signs of any character shall be erected, posted or displayed upon, in, from or about any Residential Condominium or Common Elements. No owner or other resident or tenant of FORTY SIX HUNDRED CONDOMINIUM shall erect, post or display, a sign of any character upon, in, from or about any Buildings or elsewhere on the Land, except on designated areas specified by the Owners' Association. The owner of a Commercial Condominium may place such name or logo on the door of his Condominium and in an office directory as is appropriate, but no owner may place a sign in or upon a window on the exterior of the Building.

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(g) No part of the Common Elements shall be used for commercial activities of any character except for the normal use of the Common Elements on floors 3 and 4. This subsection shall not apply to the use of Condominium Unit by the Declarant for display, marketing, promotional or sales, or business purposes.

(h) No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted within any Condominium Unit or upon any Common Elements. Trash and garbage containers shall not be permitted to remain in public view, but shall be deposited in the receptacles provided for that purpose.

(i) No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be maintained upon any Common Elements at any time. No clothing, laundry, rugs or wash shall be hung from or spread upon any window or exterior portion of a Condominium Unit or in or upon a Common Element.

(j) No owner or other resident shall install any electrical or telephone wire, television antenna, or other antenna, air conditioning unit or other machine or device on the exterior of the Building in FORTY SIX HUNDRED CONDOMINIUM or in such a fashion that it protrudes through the roof or any windows, or any walls of the Building.

(k) There shall be no violation of any rules and regulations for the use of the Common Elements or other "house rules", which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere by these By-Laws authorized to adopt such rules.

ARTICLE XI

Architectural Control and Alteration of Unit Boundaries

Section 1. Architectural Control. Except for the original construction of the Condominium Unit situate within the Project and any improvements to any Condominium Unit or to the Common Elements by the Declarant, and except for purposes of proper maintenance and repair or as otherwise in these By-Laws provided, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any lighting, shades, screens, awnings, decorations, fences, aerials, antennas, radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, porches, driveways, walls or to make any change or otherwise alter (including any alteration in color) in any manner whatsoever to the exterior of any Residential or Commercial Condominium or upon any of the Common Elements within the Project until the complete plans and specifications, showing the location, nature, shape, height, material, color, type of construction

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or any other proposed form of change (including, without limitation, any other information specified by the Board of Directors or its designated committee) shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Directors. Nothing contained in the Section shall be deemed to empower the Board of Directors to authorize any change in conflict with any provision of the Declaration.

In the event the Board of Directors, or its designated committee, fails to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. The Section shall not apply to any Street-Front Commercial Unit.

Section 2. Reassignment of Limited Common Elements.

A unit owner who desires to assign the Limited Common Elements located in the parking garage, parking structure, and/or storage area and appurtenant to his Unit must do so by a written application to the President of the Owners' Association or his designee. The President or his designee shall forthwith prepare and execute an amendment to the Declaration, and appropriate exhibits thereto, reassigning all rights, responsibilities and obligations which apply to the Limited Common Elements. Upon execution of the reassignment, the President shall deliver to the unit owners involved, a prepared document together with an invoice for the cost of preparation. Such amendment shall not become effective until the reassignment is returned, acknowledged by all unit owners involved in the reassignment together with the receipt of the payment for costs. Approval of the application for reassignment of a Limited Common Element shall be by majority vote of the Board of Directors. Any assignment hereunder is subject to the prior written approval of the holder of any first mortgage encumbering the Unit from which the assignment is to be made.

Section 3. Relocation of Boundaries Between Units.

The unit owners who desire to relocate the boundaries between their Units must notify in writing the Board of Directors whose responsibility it shall be (1) to approve such notice within 45 days; (2) upon such approval to forthwith prepare and execute an amendment to the Declaration identifying the Units and containing the conveyance between the unit owners; (3) accept the reasonable reallocation made by the owners concerned as between the Units of the undivided interest in the Common Elements appertaining to those Units; (4) accept the reasonable reallocation made by the unit owners involved of the number of votes in the Owners' Association assigned to the Units, including the proportionate reallocation of liability for Common Expenses and rights to common profits; (5) prepare amendments to these By-Laws reflecting

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ing the reallocation of undivided interest in the Common Elements and votes in the Owners' Association and liability for Common Expenses and rights to Common Profits; (6) have prepared by a registered architect or engineer such changes in boundaries of the appropriate Units; (7) assess to the unit owners involved the cost of the preparation of the documents required hereby. The unit owners undertaking such relocation shall obtain the prior written approval of the holders of first mortgages encumbering the respective Units, and bear all the costs of undertaking the relocation of the boundaries. The unit owners must supply with the notice to the Board of Directors, proof that the relocation will in no way weaken the structural integrity of the Building.

It shall be the duty of the unit owners involved to record the amendments and documents in accordance with these By-Laws and the laws of any political division of the State of Virginia. *

Section 4. Subdivision of a Unit. Upon written notice to the Board of Directors by a unit owner of a Commercial Unit of his intention to subdivide his Unit, the Board of Directors shall within 45 days approve such notice by majority vote and prepare and execute the following: (1) an amendment to the Declaration assigning new identifying numbers to the new Units created together with a reasonable reallocation of the undivided interest in the Limited Common Elements acceptable to the subdividing owner who may specify in his written application that this assignment shall be made to one or more but less than all of the new Units. If the subdividing owner specifies no allocation of the Limited Common Elements between new Units, the new Units shall jointly share all rights and shall be equally liable jointly and severally for all obligations of the original Unit; (2) an amendment to these By-Laws, acceptable to the subdividing owner, reasonably allocating to the new Units the votes in the Owners' Association and a proportionate allocation based on the size of the new Units of the liability for Common Expenses and rights to common profits including an assignment of the undivided interest in the Common Elements; (3) have prepared by a registered architect or engineer an amendment to the plats and plans indicating the new boundaries and identifying numbers; (4) deliver to the subdividing owner the above documents together with an invoice for the cost of their preparation.

The subdividing owner shall record the above documents and pay all costs assessed in accordance with these By-Laws and the laws of any political division of this state before construction on the subdivision may commence. The subdividing owner must bear all costs of undertaking the subdivision of his Unit.

This Section shall have no application to the conversion of convertible space.

Section 5. Alteration within Units. A unit owner who acquires an adjoining Unit and desires to remove any part of the intervening partition must, upon written application to the Board of Directors, demonstrate that such removal will in no way weaken a bearing wall or bearing column and that no portion of any Common Element,

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other than the partition itself, will be damaged, destroyed, or endangered. A unit owner may make improvements or alterations within his Unit which do not impair the structural integrity of the Building or lessen the support for any portion of the Condominium. No Residential or Commercial owner may make any improvements or changes which will change the exterior appearance of the Condominium Project. Any unit owner making alterations pursuant to this Section shall obtain the prior written approval of all holders of first mortgages encumbering both Units.

Section 6. Conversion of Convertible Spaces. The Declarant may convert all or any portion of any convertible space into one or more Units and/or Common Elements, including, without limitation, Limited Common Elements. The Declarant shall prepare, execute, and record an amendment to the Declaration describing the conversion. Such amendment shall assign an identifying number to each Unit formed out of a convertible space and shall allocate to each Unit a portion of the undivided interest in the Common Elements appertaining to that space. Such amendment shall describe or delineate the Limited Common Elements formed out of the convertible space, showing or designating the Unit or Units to which each is assigned. If all or any portion of any convertible space is converted into one or more Units in accordance with this Section, the Declarant shall prepare and execute, and record simultaneously with the amendment to the Declaration, an amendment to the By-Laws, allocating votes in the Unit Owners' Association, rights to future common profits, and liabilities for future Common Expenses not specially assessed.

The Board of Directors shall execute the documents and amend the Condominium Instruments as required by the Section herein for subdivision of Units but shall have no authority of approval or denial over such conversion.

ARTICLE XII

Insurance

Section 1. Insurance. The Board of Directors shall obtain and maintain, to the extent available, at least the following:

(a) Insurance on the Project in an amount equal to one hundred percent (100%) of the full replacement value (i.e. 100% of "replacement cost") of the Building and Limited Common Elements (as determined annually by the Board of Directors) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation. Such coverage shall afford protection against, at least, the following:

(i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;

(ii) such other risks as shall customarily be covered with respect to Projects similar in construction, location and use, including, but not limited to, vandalism,

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malicious mischief, boiler and machinery explosion or damage, and such other insurance as the Board of Directors may from time to time determine; and

(iii) a master liability policy covering the Unit Owners' Association, the Board of Directors, the Managing Agent, all agents and employees of the above and all unit owners in residence or their tenants in residence.

(b) Public liability insurance in such amounts and in such forms as may be considered appropriate by the Board of Directors including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership and/or use of the Condominium Project or any portion thereof; and

(c) Workmen's compensation insurance to the extent necessary to comply with any applicable law; and

(d) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

Section 2. Limitations. Any insurance obtained pursuant to the requirements of this ARTICLE shall be subject to the following provisions:

(a) All policies shall be written with a company or companies licensed to do business in the State of Virginia and holding a rating of "AAA" or better, by Best's Insurance Reports and a policyholder's rating of "A" or better.

(b) Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors or its authorized representative, including any trustee with which the Owners' Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall hereinelsewhere be referred to as the "Insurance Trustee" and all proceeds covering any loss shall be payable to the Insurance Trustee, or to his successor. All proceeds from an insured loss under such policy shall be held for the use and benefit of the Owners' Association and the owners of appropriate Condominium Units and their respective mortgagees as interest may appear. Such insurance proceeds shall be applied and distributed in accordance with the articles relating to insurance in the Declaration and these By-Laws.

(c) In no event shall the insurance coverage obtained and maintained pursuant to the requirements of this ARTICLE be brought into contribution with insurance purchased and issued in the name of any individual Condominium Unit owner purchased as herein permitted by such owner of a Condominium Unit or their mortgagee. Any "no other insurance" or similar clause in any policy obtained by the Owners' Association pursuant to the requirements of this ARTICLE shall exclude such policies from consideration.

(d) All policies shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon, including any and all mortgagees of the Condominium Units;

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(e) All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of these By-Laws.

(f) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Owners' Association, the Board of Directors, their agents and employees, the respective Condominium Unit owners, their Unit employees and agents. Independent contractors shall not be considered agents, employees or servants of the Board of Directors or of the respective Condominium Unit owners within the meaning of said waiver.

(g) The insurance policy shall contain a provision that the insurance shall not be prejudiced:

(i) By any act or neglect of any occupants or owners of the Building when such act or neglect is not within the control of the Condominium Unit owners collectively; or

(ii) By failure of the Condominium Unit owners collectively to comply with any warranty or condition with regard to any portion of the premises over which the Condominium Unit owners collectively have no control.

Section 3. Individual Policies - Recommendation of Declarant. The owner of any Condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a "condominium-owner's endorsement" for improvements and betterments to the Condominium Unit made or acquired at the expense of the owner) at his own expense. Such insurance shall be written either by the same carrier as that purchased by the Board of Directors pursuant to this ARTICLE or if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 2(f) of this ARTICLE. The Declarant recommends that each owner of a Condominium Unit in the Project obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a "Tenant's Homeowners Policy", or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of the Condominium Unit; additional living expense, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "condominium-owner's endorsement" covering losses to improvements and betterments to the Condominium Unit made or acquired at the expense of the owner.

ARTICLE XIII

Casualty Damage - Reconstruction or Repair

Section 1. Use of Insurance Proceeds. In the event of damage or destruction of any Residential or Commercial Unit by fire or other casualty the same shall be promptly repaired or reconstructed in substantial conformity with the original plans and specifications with the proceeds of insurance available for the purpose, if any.

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Section 2. Proceeds Insufficient. In the event that the proceeds of insurance are not sufficient to repair, damage or destruction to any Residential or Commercial Unit by fire or other casualty, or in the event such damage or destruction is caused by any casualty not herein required to be insured against, then the repair or reconstruction of the damaged Common Elements shall be accomplished promptly by the Owners' Association at its Common Expense, such Common Expense shall be assessed in accordance with the interest in the Common Element damaged. The repair or reconstruction of any Residential or Commercial Condominium Unit shall be accomplished promptly by the Owners' Association at the expense of the owner of the affected Condominium Unit. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for the same shall have all the priorities provided for in ARTICLE IX of these By-Laws.

Section 3. Restoration Not Required. In the event more than two-thirds (2/3rds) of the total number of Residential and Commercial Condominium Units in the Project are substantially damaged or destroyed by fire or other casualty and members do not promptly resolve to proceed with repair or reconstruction in the manner set forth in the Declaration, then and in that event the Project shall be deemed to be owned in common by the owners of all of the Residential and Commercial Condominium Units in the same proportions as that previously established for ownership of appurtenant undivided interests in the Common Elements and the Project shall be subject to an action for partition at the suit of the owner of any Residential and Commercial Condominium Unit or the holder of any lien thereon, in which event the net proceeds of sale, together with the net proceeds of any insurance paid to the Owners' Association or its members in common, shall be considered as one fund and shall be divided among the owners of all the Condominium Units in the same proportion as that previously established for ownership of appurtenant undivided interests in the Common Elements, as set forth in Exhibit D attached hereto, after first paying out of the share of the owner of any Condominium Unit, to the extent such share is sufficient for the purpose, all liens upon said Condominium Unit. In the event that either of the Street-Front Commercial Units are not destroyed by casualty damage, they shall not share in the distribution of proceeds hereunder.

ARTICLE XIV

Fiscal Management

Section 1. Fiscal Year. The fiscal year of the Owners' Association shall begin on the first day of January every year. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. Books and accounts for the Owners' Association shall be kept under the direction of the Treasurer in accordance with good accounting practices consistently applied.

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Section 3. Auditing. At the close of each fiscal year, the books and records of the Owners' Association shall be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards consistently applied. Based upon such report, the Owners' Association shall furnish its members with an annual financial statement including the income and disbursement of the Owners' Association.

Section 4. Inspection of Books. The Books and accounts of the Owners' Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the members of the Owners' Association and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Condominium Unit and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as members. Such inspection shall be allowed providing reasonable notice is given to the custodian of the Books and accounts, but in no event may such inspection be employed to harass or unreasonably disrupt the normal work routine of such custodian. The holder of any first mortgage has the right to request the submission of annual reports and other financial data of the Owners' Association.

Section 5. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Owners' Association by either the President or Vice President, and all checks shall be executed on behalf of the Owners' Association by such officers, agents or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Seal. The Board of Directors shall provide a suitable corporate seal containing the name of the Owners' Association, which seal shall be in the charge of the Secretary. If so directed by the Board of Directors, a duplicate seal may be kept and used by the Treasurer.

ARTICLE XV

Amendment

Section 1. Amendments. The By-Laws may be amended by the affirmative vote of members representing eighty per cent (80%) of the total votes of the Condominium Project at any meeting of the members duly called for such purpose, and shall become effective only upon the recordation among the Land Records for the City of Alexandria, Virginia, of an amendment to the By-Laws attached as Exhibit E to the Declaration setting forth such amendment to these By-Laws and only after thirty (30) days prior written notice to the institutional holders of all first mortgages on the Condominium Units in the Project. Amendments may be proposed by the Board of Directors or by petition signed by members representing at least fifteen percent (15%) of the total votes of the Condominium Project. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

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ARTICLE XVI

Mortgages - Notice

Section 1. Notice to Board of Directors. Any owner of any Condominium Unit in the Condominium Project who mortgages such Unit shall promptly notify the Board of Directors of the name and address of his mortgagee, and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

Section 2. Definition. As used in this ARTICLE, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees, and the term "mortgage" shall include deed of trust. As used generally in these By-Laws, the term "institutional holder" or "institutional mortgagee" shall include banks, trust companies, insurance companies, savings and loan associations, pension funds, and any corporation, including a corporation of, or affiliated with, the United States Government, or any agency thereof.

ARTICLE XVII

Compliance - Interpretation - Miscellaneous

Section 1. Compliance. These By-Laws are set forth in compliance with the requirements of Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended.

Section 2. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as in the Declaration or the aforesaid statute. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the aforesaid Declaration and Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended, the provisions of the statute shall control.

Section 3. Notices. Unless another type of notice is hereinafter specifically provided for, any and all notices called for in the Declaration or in these By-Laws shall be given in writing.

Section 4. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, such determination shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 5. Waiver. No restriction, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

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Section 6. Captions. The captions contained in these By-Laws are for convenience only and are not a part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

Section 7. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Section 8. Arbitration. A dispute arising between the Owners' Association, a unit owner, a Tenant in residence, or an assignee of any of these or a dispute between unit owners, their Tenants, or assignees shall be submitted to arbitration in accordance with the rules of the American Arbitration Association and the judgment thereby rendered shall be binding on all parties and may be presented in any Court having jurisdiction of the dispute.

VIRGINIA,
In the Clerk's office of the Circuit
Court City of Alexandria this deed
was received and the taxes imposed by
Sec. 58-64.1 in the ... of \$
have been paid G. W. The Annexed
certificate submitted to record on

11-16-75 3:30 P.M.

Robert M. Swink CLERK

[The body of the document contains several paragraphs of text that are extremely faint and illegible due to the quality of the scan. The text appears to be a formal document, possibly a legal filing, but the specific content cannot be discerned.]

**APPENDIX TO EXAMINER'S REPORT:
DOC 6**

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

FIRST OWNERS' ASSOCIATION OF
FORTY SIX HUNDRED CONDOMINIUM, INC.,)

Plaintiff,)

v.)

Civil Case No. _____

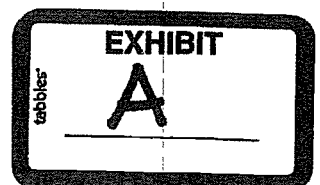
GORDON RESIDENTIAL HOLDINGS, LLC,)
Serve: William T. Freyvogel, Registered Agent)
8200 Greensboro Drive)
Suite 325)
McLean, Virginia 22102)

Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA"), by counsel, pursuant to Virginia Code § 8.01-184, *et seq.*, seeks declaratory judgment against Defendant, Gordon Residential Holdings, LLC ("Gordon Residential"), and in support thereof states as follows:

1. Forty Six Hundred Condominium is a mixed-use condominium located at 4600 Duke Street in Alexandria, Virginia that is comprised of over 400 units and that was created in 1975 pursuant to the Declaration attached as **Exhibit 1** to this Complaint (the "Condominium").
2. FOA is a Virginia non-stock corporation formed pursuant to the requirements of the condominium instruments and § 55-79.73A of the Virginia Condominium Act to oversee the management of the Condominium as its unit owners' association.



3. Gordon Residential is a Virginia limited liability company that owns one unit in the Condominium known as unit 1518 which it acquired from Gordon Properties, LLC on August 7, 2008.

4. Gordon Properties, LLC is a Virginia limited liability company that owns approximately 38 units in the Condominium.

5. Bryan Sells is the managing member of both Gordon Properties, LLC and Gordon Residential.

6. At least some of the members of Gordon Residential are also members of Gordon Properties, LLC.

7. Pursuant to Article IV, Section 2 of FOA's Bylaws, attached as **Exhibit 2**, FOA holds its annual meeting on the first Wednesday of each October. One of the purposes of the annual meeting, assuming the required quorum is attained, is the election of members of FOA to serve on FOA's Board of Directors.

8. FOA has scheduled its 2011 annual meeting for October 5, 2011 at which, if a quorum is attained, the Board of Directors will be elected. Gordon Residential has identified five candidates to run for election to FOA's Board of Directors. The five candidates are Deneta Sells, Moneta Howard, Eliza Langdon, Brandy Greenwell and Nick Greenwell. Gordon Residential maintains that they are all officers of Gordon Residential.

9. Deneta Sells is the wife of Bryan Sells.

10. Brandy Greenwell is the sister of Bryan Sells and is a member of Gordon Properties, LLC.

11. On March 26, 2009, FOA's Board of Directors adopted Policy Resolution No. 2009-03, attached as **Exhibit 3**, to bring together and to clarify the requirements for service on the Board of Directors already contained in the Condominium Act and the condominium instruments. The resolution states, in part, that a member of FOA, either a natural or non-natural person, may have only one position or one representative on FOA's Board of Directors at any given time. Therefore, for example, a non-natural entity such as Gordon Residential is entitled to one representative on the Board of Directors, assuming that person is elected pursuant to the Bylaws of FOA.

12. The portion of Policy Resolution No. 2009-03 providing that a member may only have one position on FOA's Board of Directors is simply a restatement of the requirements of provisions of the Virginia Condominium Act and FOA's Bylaws defining a member and unit owner.

13. Article III, "Membership," Section 1 of FOA's Bylaws, "Members" states: "Every person, group of persons, corporation, trust or other legal entity, or any combination thereof, which owns a condominium unit within the condominium project shall be a member of the owners association" This provision makes clear that a non-natural person (such as a limited liability company) or group of persons is deemed a single unit owner or member.

14. Article V "Directors," Section 1 of FOA's Bylaws, "Numbers and Qualification" states: "The affairs of the Owners' Association shall be governed by the Board of Directors (hereinafter sometimes referred to as "Board of Directors") composed of at least seven (7) natural persons who shall (after the first annual meeting of members) be members of the Owners' Association. At least one of the Directors, but not more than two, shall be owners of Commercial Condominium Units . . ."

15. Section 55-79.78B of the Virginia Condominium Act states: "If the condominium instruments provide that any officer or officers must be unit owners, then notwithstanding the provisions of subsection (a) of Section 55-79.50, the term "unit owner" in such context shall, unless the condominium instruments otherwise provide, be deemed to include, without limitation, any director, officer, partner and/or trustee of any person which is, either alone or in conjunction with another person or persons, a unit owner." In short, this provision provides, consistent with the provisions of FOA's Bylaws, that a non-natural person or a group of persons who own a unit are deemed a single unit owner.

16. Gordon Residential is running five of its officers and/or members who are intended to serve simultaneously on the Board of Directors, assuming they obtain the requisite votes at the upcoming annual meeting. In other words, upon information and belief, it is Gordon Residential's position that although it owns a single residential unit, because it is a non-natural person, it is entitled to seek five seats on FOA's Board of Directors.

17. It is FOA's position that the Declaration and Bylaws of FOA, as well as the Condominium Act, as set forth in Policy Resolution No. 2009-03, limit Gordon Residential to one representative on the Board of Directors at any given time. It is FOA's position that a "member" of FOA, whether a natural or non-natural person, is entitled to only one seat on FOA's Board of Directors at any given time.

18. Members of FOA have asked FOA's Elections Committee and individual Board members whether Gordon Residential is entitled to have five people hold positions on FOA's Board of Directors.

19. There is a justiciable controversy between FOA and Gordon Residential regarding the issue of whether Gordon Residential is entitled to have five representatives sit on FOA's

Board of Directors and whether a single member can have multiple representatives on FOA's Board of Directors. Resolution of this issue is critical to the upcoming 2011 annual meeting because more than a dozen candidates are running for election to the Board of Directors and whether Gordon Residential is entitled to five seats on the Board of Directors will directly impact those candidates and may affect the results of the election of FOA's Board of Directors.

20. Policy Resolution No. 2009-03 further states that entities who are "affiliated" as defined in the Policy Resolution may only collectively have one representative on FOA's Board of Directors at any given time. The purpose of this portion of Policy Resolution No. 2009-03 is to prevent any member owning more than one unit from doing indirectly what it could not do directly, effectively making an "end run" around the requirements of FOA's condominium instruments, and the Virginia Condominium Act, that limit a member of FOA to one seat on the Board of Directors at any given time.

21. The FOA Board of Directors has authority pursuant to Article V, Section 3 of FOA's Bylaws to promulgate resolutions necessary for the administration of FOA's affairs. Article V, Section 3 of FOA's Bylaws states: "The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the owners' association and the condominium project and may do all acts and things as are not by law or by these Bylaws directed to be exercised and done by the members."

22. The portion of Policy Resolution 2009-03 limiting "affiliates" to one seat on FOA's Board of Directors at any given time was implemented by FOA's Board of Directors to ensure that no single entity or group of related entities could dominate the Board of Directors and prevent representation of a wide range of interests of the over 400 unit owners. Otherwise, a member owning more than one unit could circumvent this limitation by conveying units to

related entities. Such a subterfuge would defeat these limitations and is properly prohibited by Policy Resolution No. 2009-03.

23. Gordon Properties, LLC has owned in excess of 40 units at the Condominium and currently owns approximately 38 units. On November 6, 2009 Gordon Properties, LLC conveyed one of its units at the Condominium to its managing member, Bryan Sells. On August 7, 2008 Gordon Properties, LLC conveyed one of its residential units to Gordon Residential.

24. The conveyance by Gordon Properties, LLC of units to Bryan Sells individually and to Gordon Residential was a subterfuge to evade the limitation set forth in FOA's condominium instruments, and the Virginia Condominium Act, limiting a member to one seat on FOA's Board of Directors at any given time. There was no commercial or business reason for these conveyances; they were simply undertaken to evade the limitation of one member/one representative on FOA's Board of Directors.

25. Gordon Properties, LLC is running a candidate for FOA's Board of Directors, Lindsay Wilson. Bryan Sells is running as an individual for election to FOA's Board of Directors. Gordon Residential has nominated five individuals to run for positions on FOA's Board of Directors. Thus, these affiliated persons are seeking every seat on FOA's seven-member Board of Directors.

26. Upon information and belief, Gordon Residential has taken the position that Policy Resolution No. 2009-03 is invalid and unenforceable, including the provisions limiting affiliates to one seat on FOA's Board of Directors at any given time.

27. It is FOA's position that Policy Resolution No. 2009-03 is valid in its entirety, including the provisions limiting affiliates to one seat on FOA's Board of Directors at any given time.

28. There is a justiciable controversy between FOA and Gordon Residential regarding the validity of Policy Resolution No. 2009-03, including the provisions limiting affiliates to one seat on FOA's Board of Directors at any given time. It is critical to resolve this controversy prior to the 2011 annual meeting because the resolution of this issue will impact which candidates may be elected to and may serve on FOA's Board of Directors. If this issue is not resolved and multiple directors are elected by one member or affiliated group, it could call into question the validity of the Board of Directors and any actions taken by that Board.

WHEREFORE, Plaintiff, First Owners' Association of Forty Six Hundred Condominium, Inc. respectfully requests that this Court enter declaratory judgment in its favor and against Gordon Residential Holdings, LLC declaring the following:

A. The condominium instruments establishing the Condominium, and the Virginia Condominium Act, limit a member of FOA to one seat on FOA's Board of Directors at any given time and, therefore, Gordon Residential may have only one representative serve on FOA's Board of Directors at any given time;

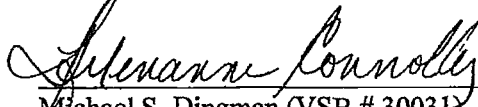
B. Policy Resolution No. 2009-03 was validly enacted by FOA and is enforceable and binding in its entirety;

C. Gordon Residential may not have a representative serve on FOA's Board of Directors if Bryan Sells, individually, or a representative of Gordon Properties, LLC, is elected to serve on FOA's Board of Directors; and

D. That the Court make such further and additional declarations, and provide such additional remedies, as are just and necessary.

FIRST OWNERS' ASSOCIATION OF FORTY
SIX HUNDRED CONDOMINIUM, INC.
By Counsel

REED SMITH LLP



Michael S. Dingman (VSB # 30034)

Robert M. Diamond (VSB # 16036)

Helenanne Connolly (VSB # 70911)

3110 Fairview Park Drive

Suite 1400

Falls Church, Virginia 22042

Telephone: 703-641-4200

Facsimile: 703-641-4340

Email: mdingman@reedsmith.com

US_ACTIVE-107275242.2

**APPENDIX TO EXAMINER'S REPORT:
DOC 7**

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

GORDON PROPERTIES, LLC,

Plaintiff,

v.

**BOARD OF DIRECTORS OF FIRST
OWNERS' ASSOCIATION OF FORTY SIX
HUNDRED CONDOMINIUM, INC.,**

Serve: Dewanda F. Cuadros (President)
4600 Duke Street, Unit #411
Alexandria, Virginia 22304

and

DEWANDA F. CUADROS, in her capacity as
Member of the Board of Directors
4600 Duke Street, Unit #910
Alexandria, Virginia 22304

and

COREY BROOKS, in his capacity as
Member of the Board of Directors
4600 Duke Street, Unit #1131
Alexandria, Virginia 22304

and

ELIZABETH MOORE, in her capacity as
Member of the Board of Directors
4600 Duke Street, Unit #411
Alexandria, Virginia 22304

and

F. J. PEPPER, in his capacity as
Member of the Board of Directors
4600 Duke Street, Unit #932
Alexandria, Virginia 22304

CASE NO. _____

and

JERRY TERRY, in his capacity as
Member of the Board of Directors
4600 Duke Street, Unit #1010
Alexandria, Virginia 22304

and

LUCIA HADLEY, in her capacity as
Member of the Board of Directors,
4600 Duke Street, Unit #1109
Alexandria, Virginia 22304

and

KEVIN BRONCATO, in his capacity as
Chairman of the Elections Committee,
4600 Duke Street, Unit #1524
Alexandria, Virginia 22304

Defendants.

COMPLAINT

This is an action for injunctive, equitable and other relief brought by Gordon Properties LLC, against the Defendants for fraud and breach of fiduciary duty, election fraud and statutory business conspiracy, and for such other relief as set forth below:

The Parties

1. Plaintiff Gordon Properties, LLC ("Gordon Properties") commenced its chapter 11 case (the "Case") with the filing of a voluntary petition (the "Petition") on October 2, 2009 (the "Petition Date"). Gordon Properties is in possession of its assets and is operating its business as a debtor-in-possession.

2. Forty Six Hundred Condominium ("Condominium") is a mixed-use high rise condominium project located at 4600 Duke Street, Alexandria, Virginia. It consists of one sixteen-story structure containing multi-family residential and commercial condominium units and two separate, detached street-front commercial units.

3. The Condominium was established by a Declaration recorded on November 16, 1975, in Deed Book 811, Pages 317, *et seq.* among the land records of the City of Alexandria, Virginia.

4. Section XV of the Declaration states that the "[a]dministration of the Condominium Project shall be vested in the Owners' Association in accordance with this Declaration, the By-Laws, Exhibits and amendments thereto. The Owners' Association shall consist of all Unit Owners in Accordance with the By-Laws attached [to the Declaration] as Exhibit E and made a part hereof." (Together the Declaration and the By-laws are referred to as the "Condominium Instruments.")

5. First Owners' Association of Forty Six Hundred Condominium, Inc. ("FOA") is a

Virginia non-stock corporation incorporated on May 17, 1977, to serve as the "Owners' Association" required by the Condominium Instruments.

6. Defendant Board of Directors of the FOA ("Board") is the Board of Directors required by Va. Code Ann. §13.1-853.A and Article V, Section 1 of the By-Laws.

7. Defendant Dewanda F. Cuadros ("Cuadros") is a resident of Virginia, a unit owner at the Condominium, a member of the Board, and serves as President of the Board.

8. Defendant Corey Brooks ("Brooks") is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

9. Defendant Elizabeth Moore ("Moore") is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

10. Defendant F. J. Pepper ("Pepper") is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

11. Defendant Jerry Terry ("Terry") is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

12. Defendant Lucia Hadley ("Hadley") is a resident of Virginia, a unit owner at the Condominium, and a member of the Board.

13. Defendant Kevin Broncato ("Broncato") is a resident of Virginia, a unit owner at the Condominium, and served as Chairman of the Elections Committee during FOA's 2009 annual meeting. (Defendants Cuadros, Brooks, Moore, Pepper, Terry, Hadley, and Broncato are collectively referred to herein as the "Individual Defendants" and FOA and the Individual Defendants are collectively referred to herein as the "Defendants.")

14. Gordon Properties is a Virginia limited liability company which owns thirty-nine

(39) condominium units at the Condominium (the "Units"): four (4) "Residential Units," thirty four (34) "Commercial Units," and one (1) "Street-Front Commercial Unit" (the "Restaurant Unit"), as those terms are defined in the Declaration and By-Laws.

15. The ownership of the Gordon Properties' Units includes ownership of an undivided interest of approximately 19% of the common elements as established by Exhibit D to the Declaration.

16. Gordon Properties is a member of FOA with all rights and privileges of membership created by applicable law of the Commonwealth, the By-Laws of the Corporation, and the Condominium Instruments.

17. Article V, Section 1 of FOA's By-Laws provides that the FOA Board is to be "composed of at least seven (7) natural persons who shall (after the first annual meeting of members) be members of the Owners' Association." See Exhibit A attached hereto.

18. Article V, Section 5 of FOA's By-Laws provides that members of the Board are to be elected on a staggered basis to two-year terms.

19. Article V, Section 5 also provides that the directors will hold office until their successors have been elected and hold their first meeting.

20. Va. Code. Ann § 55-79.75 requires FOA to hold a meeting of its members at least once each year.

21. The Condominium Instruments require FOA to hold annual meetings in the first Wednesday of each October.

22. The last election for directors at FOA was held in October 2006.

23. The two-year term of office of each member of the Board elected in October 2006 has expired.

24. Pursuant to the Condominium Instruments, the votes cast at an annual meeting are determined by and consistent with the percentage ownership of the common elements and, therefore, Gordon Properties' vote at FOA's annual meetings represents approximately 19% of the total votes available.

25. Article IV, Section 5 of FOA's By-Laws provides that "[t]he presence, either in person or by proxy, of members representing at least a majority of the total votes of the Condominium Project shall be requisite for, and shall constitute a quorum for the transaction of any business which affects the rights and duties of all unit owners."

26. Robert's Rules of Order is FOA's parliamentary authority.

The 2009 Annual Meeting

27. FOA abused its power in connection with the 2009 annual meeting (the "Annual Meeting"). The Chair of the 2009 Annual Meeting, Defendant Cuadros, failed to maintain order during the meeting and thereby prevented business that should have properly been brought before the association from being presented. Cuadros failed to recognize a member of the association for the purpose of making a motion to adjourn to a fixed time and date. Cuadros failed to properly follow procedures for conducting the meeting and taking motions and votes. Cuadros wrongly ruled that a motion passed when in fact it failed by an overwhelming majority, and Cuadros wrongly adjourned the meeting. Cuadros's conduct denied Gordon Properties the right to vote, all of which is more particularly set out herein. *See* Exhibit B hereto, Memorandum Opinion of June 2, 2010, United States Bankruptcy Court for the Eastern District of Virginia, Case No. 09-18086, Adv. Proc. No. 09-1304. Cuadros was aided and abetted in these actions by the other Individual Defendants.

28. FOA noticed the 2009 annual meeting (the "2009 Annual Meeting") for October

6, 2006, 2007, 2009, the first Wednesday in October 2009.

29. FOA established a procedure whereby owners registered their attendance at an annual meeting and their respective number of votes prior to the start of the meeting. This registration was then used to determine if the necessary percentage of votes was present to establish a quorum.

30. Members representing approximately 38% of the total votes of FOA registered in person or by proxy for the 2009 Annual Meeting and were counted as present for purposes of determining whether a quorum was present.

31. Gordon Properties registered for the 2009 Annual Meeting and its approximately 19% of the total votes were counted toward the establishment of a quorum.

32. Two other individuals, Jane Brungart, who is a member of the Board, and Martina Hernandez, both of whom are independent of Gordon Properties, gathered registered proxies for the 2009 Annual Meeting representing approximately 15% of the total votes of FOA.

33. Together, Gordon Properties, Brungart, and Hernandez held approximately 34% of the total available votes and more than 90% of the votes registered for the 2009 Annual Meeting.

34. The 2009 Annual Meeting was called to order by Defendant Cuadros as President of FOA. Cuadros proceeded to chair the 2009 Annual Meeting.

35. The chairman of FOA's elections committee, Kevin Broncato, reported to Cuadros that, based on the registration, there was an insufficient number of votes to establish a quorum.

36. At least three members of the Board (Defendants Cuadros, Terry, and Brooks)

and the chair of FOA's election committee (Broncato) were present in person at the 2009 Annual Meeting, but were not counted for quorum purposes because they intentionally did not register their votes before entering the meeting room.

37. Other members of FOA who did not register may also have been present in person at the 2009 Annual Meeting and were not counted for purposes of establishing a quorum.

38. When Broncato reported that the number of votes "present" at the meeting were insufficient to establish a quorum, he knew that number to be false because he knew that he and others present in person at the meeting were not counted for purposes of establishing a quorum.

39. Cuadros knew when she began to preside over the meeting that she had not registered her votes as present at the meeting for quorum purposes.

40. After receiving Broncato's report that no quorum was established, Cuadros then announced that there was no quorum for the 2009 Annual Meeting and asked for a motion to adjourn.

41. Brungart was the first to respond. Brungart rose and moved to adjourn the meeting for 30 days.

42. Cuadros then told Brungart that she was not recognized and recognized Broncato instead.

43. Broncato then moved to adjourn *sine die*. The motion was seconded by Defendant Terry.

44. Cuadros knew when she recognized Broncato for purposes of making a motion to adjourn that he had not registered his votes as present at the meeting for quorum purposes.

45. Cuadros knew when she accepted a second on the Broncato motion from Terry that he had not registered his votes as present at the meeting for quorum purposes.

46. Defendants Cuadros, Terry, Brooks, and Broncato were present in person and participated fully in the meeting even though they knew they had not registered as present and were not being counted for quorum purposes.

47. The Individual Defendants deliberately and intentionally failed to count everyone present in person at the 2009 Annual Meeting when making the determination as to whether a quorum had been established.

48. The Individual Defendants took these actions with the intent to deprive Gordon Properties and other members of FOA of the opportunity to vote for and elect a Board of Directors.

49. The members of FOA, including Gordon Properties, were improperly denied their right to elect a Board of Directors.

50. Cuadros was an experienced chairperson, skilled at running meetings, and familiar with the basics of Robert's Rules of Order.

51. Cuadros took a voice vote on the Broncato motion to adjourn, announced that the motion passed, and, without recognizing anyone else or providing sufficient time for anyone else to speak or seek recognition, adjourned the meeting.

52. During the brief voice vote on Broncato's motion, Brungart, Hernandez, and Gordon Properties voted "no."

53. Cuadros knew that the votes in FOA were weighted and that the outcome of the vote on the Broncato motion should not have been based upon either the volume of the voices or the number of people responding but upon the weight of the votes.

54. Cuadros knew that Gordon Properties, Brungart, and Hernandez, independently

and collectively, held enough votes to determine the outcome on the Broncato motion had it been proper.

55. Cuadros knew that a sufficient number of votes in FOA voted "no" to defeat the Broncato motion.

56. Cuadros willfully and intentionally ruled the Broncato motion passed when she knew or should have known that it failed.

57. Cuadros also failed to provide sufficient time after the Broncato motion to give those in attendance an opportunity to object to the adjournment or take other action with respect to the meeting.

58. Had Cuadros provided sufficient time after declaring the Broncato motion passed and before declaring the meeting adjourned, Gordon Properties would have asked for a division of the house or would have otherwise objected to the ruling of the chair.

59. By declaring the Broncato motion passed notwithstanding the votes of Brungart, Hernandez, and Gordon Properties and by failing to provide sufficient time to request a division or to object to the ruling of the chair, the Defendants denied Gordon Properties its right to vote.

60. Cuadros willfully and intentionally did not allow sufficient time after declaring the Broncato motion passed for anyone to speak or seek recognition before declaring the meeting adjourned.

61. The individual Defendants engaged in willful misconduct at the 2009 Annual Meeting for the purpose of perpetuating the Board in office and to prevent Gordon Properties and other unit owners from exercising their right to vote and elect directors.

62. The manner in which the meeting was conducted was an intentional abuse of corporate power.

63. FOA never rescheduled the 2009 Annual Meeting.

The 2010 Annual Meeting

64. FOA noticed the 2010 annual meeting (the "2010 Annual Meeting") for October 6, 2010, the first Wednesday in October 2010.

65. On September 29, 2010, FOA sent a notice to Gordon Properties that FOA was canceling the 2010 Annual Meeting. A copy of the cancellation notice is attached hereto and incorporated herein as Exhibit C.

66. The stated purpose for canceling the 2010 Annual Meeting was that FOA did not want to allow Gordon Properties the right to vote and that denying Gordon Properties the right to vote would constitute a violation of the automatic stay.

67. Gordon Properties subsequently requested a special meeting.

68. The request, although valid, was denied and the holdover directors elected in 2005 and 2006 in addition to those appointed to fill vacancies remain on the board.

COUNT I (Corporate Election Fraud)

69. Gordon Properties incorporates the allegations contained in paragraphs 1 through 68 as if fully set forth herein.

70. The Defendants engaged in willful acts of corporate election fraud for the purpose of perpetuating themselves in office and to prevent Gordon Properties and other unit owners from exercising their right to vote and elect directors.

71. Defendants' actions at the 2009 Annual Meeting and preceding the 2010 Annual Meeting, as noted above, constituted false representations of material fact.

72. The Defendants' made these representations knowingly and with the intent to mislead the Plaintiff and other unit owners.

73. As a result of Defendants' misrepresentations, Gordon Properties was forced to rely on these representations.

74. Gordon Properties has been damages as a result of the Defendants' misrepresentations.

COUNT II (Breach of Fiduciary Duty- 2009 Meeting)

75. Gordon Properties incorporates the allegations contained in paragraphs 1 through 74 as if fully set forth herein.

76. The Individual Defendants, as officers, directors, and committee chair of FOA, owed a fiduciary duty to the members of FOA, including Gordon Properties, to conduct the 2009 Annual Meeting in accordance with the Condominium Instruments, the Condominium Act, and the Virginia Non-stock Corporation Act, that was free from fraud, malfeasance and official misconduct.

77. The Individual Defendants breached that duty by allowing the 2009 Annual Meeting to be conducted in the manner set forth above.

78. The Individual Defendants, as officers and directors of FOA, owed a fiduciary duty to the members of FOA, including Gordon Properties, to conduct annual meetings in accordance with the Condominium Instruments and the Condominium Act.

79. The Individual Defendants breached that duty for the reasons stated herein and by failing to conduct annual meetings since 2006.

80. The Individual Defendants acted willfully and in bad faith.

81. The Individual Defendants' breaches of fiduciary duty prevented Gordon Properties and the other members of FOA from exercising their right to vote for directors.

82. The Individual Defendants' breaches of fiduciary duty prevented the 2009 Annual

Meeting from being properly called to order, properly conducted, and properly adjourned, rendering the meeting void.

COUNT III (BREACH OF FIDUCIARY DUTY- 2010 Meeting)

83. Gordon Properties incorporates the allegations contained in paragraphs 1 through 82 as if fully set forth herein.

84. The Individual Defendants, as officers, directors, and committee chair of FOA, owed a fiduciary duty to the members of FOA, including Gordon Properties, to conduct the 2010 Annual Meeting in accordance with the Condominium Instruments, the Condominium Act, and the Virginia Non-stock Corporation Act, that was free from fraud, malfeasance and official misconduct.

85. The Individual Defendants breached that duty by canceling the 2010 Annual Meeting in the manner set forth above.

86. The Individual Defendants, as officers and directors of FOA, owed a fiduciary duty to the members of FOA, including Gordon Properties, to conduct annual meetings in accordance with the Condominium Instruments and the Condominium Act.

87. The Individual Defendants breached that duty by canceling the 2010 Annual Meeting and by failing to conduct annual meetings since 2006.

88. The Individual Defendants acted willfully and in bad faith.

89. The Individual Defendants' breaches of fiduciary duty prevented Gordon Properties and the other members of FOA from exercising their right to vote for directors.

90. The Individual Defendants' breaches of fiduciary duty prevented the 2010 Annual Meeting.

COUNT IV

(Combination to Injure Gordon Properties in its Reputation, Trade, Business and Profession – Virginia Code §§ 18.2-499, 18.2-500)

91. Gordon Properties incorporates the allegations contained in paragraphs 1 through 82 as if fully set forth herein.

92. The Individual Defendants, acting in concert, and acting in their own personal interests, and/or acting without any legitimate corporate authority by virtue of their fraudulent and intentional prevention of annual board elections in order to attempt to perpetuate their corporate titles, agreed and conspired to harm Gordon Properties through the intentional misapplication of the methodology use to calculate assessments against Gordon Properties.

93. The Individual Defendants were acting in their own self-interest, and not in the best interests of the corporation, by fraudulently attempting to preserve their own corporate positions and power through the illegal and improper failures to conduct annual elections.

94. The Individual Defendants were acting without lawful corporate authority by virtue of the fact that they “held” their offices and membership on the board of directors solely by virtue of their intentional and improper cancellation of the annual elections. Thus, the extension of the terms of the Individual Defendants was without legitimate basis, resulting in their acting in their individual capacities.

95. The concerted actions of the Individual Defendants, in preventing Gordon Properties from lawfully participating in annual elections, were committed to intentionally, purposefully, and without lawful justification injure Gordon Properties’ business, reputation, or trade, and these actions did in fact harm Gordon Properties, with such harm including damage to Gordon Properties’ business financially through the continued assertion of the improper assessment amounts, damage to Gordon Properties’ reputation in the community by asserting

that it was delinquent through the non-payment of these improper assessment amounts, and such other harm and damages as shall be proven at trial.

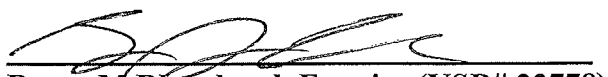
96. Pursuant to Virginia Code §§18.2-499 and -500, Gordon Properties is entitled to three-fold damages, including but not limited to lost profits, costs of litigation, and reasonable attorneys fees.

WHEREFORE, Gordon Properties, LCC, by counsel, respectfully prays that this Court grant the following relief:

- a. determine that the Defendants' conduct at the 2009 Annual Meeting constituted fraud, willful misconduct, and breach of fiduciary duty;
- b. determine that the Defendants' conduct at the 2010 Annual Meeting constituted fraud, willful misconduct, and breach of fiduciary duty.
- c. Compensatory damages of \$1,000,000, jointly and/or severally against all the Individual Defendants, and thereafter multiplied three times plus litigation costs and reasonable attorneys fees under Count IV.
- d. Punitive damages of \$350,000 against each of the Individual Defendants
- e. Plus any other relief that the Court deems equitable and just.

Respectfully submitted,

GORDON PROPERTIES, LLC
By Counsel



Bruce M Blanchard, Esquire (VSB# 23778)
Stephen A. Cobb, Esquire (VSB# 75876)
Counsel for Gordon Properties, LLC
Odin Feldman & Pittleman PC

9302 Lee Highway, Suite 1100
Fairfax, Virginia 22031
Direct: 703-218-2116
Fax: 703-218-2160
Email: bruce.blanchard@ofplaw.com

53377/00001 #1487093v1

9302 Lee Highway, Suite 1100 Fairfax, VA 22031-1214
703-218-2100

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EXHIBIT E

BY-LAWS OF THE
OWNERS' ASSOCIATION

FORTY SIX HUNDRED CONDOMINIUM

EXHIBIT

A

BOOK 811 PAGE 420

EXHIBIT E

BY-LAWS
OF THE
OWNERS' ASSOCIATION
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EXHIBIT E

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BY-LAWS

OF THE

OWNERS' ASSOCIATION

OF FORTY SIX HUNDRED CONDOMINIUM

ARTICLE I

Name and Location

Section 1. Name and Location. The name of this Corporation is the "Owners' Association of FORTY SIX HUNDRED CONDOMINIUM, INC. (hereinafter referred to as the "Owners' Association"). Its principal office is located at 4600 Duke Street, Alexandria, Virginia.

Section 2. These By-Laws are established in contemplation of and pursuant to Article 55, §79.39, Code of Virginia (1950) as amended and for the administration of the Building or Buildings constituted into a Condominium Project known as FORTY SIX HUNDRED CONDOMINIUM which is located at the address set forth in Section 1 of this ARTICLE.

ARTICLE II

Definitions

Section 1. Declaration. "Declaration" as used herein means that certain Declaration made the 10th day of November 1975, by FORTY SIX HUNDRED CORPORATION pursuant to Article 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended, by which certain described premises are submitted to a Condominium Project and which Declaration is recorded among the Land Records for the City of Alexandria, Virginia.

Section 2. Other Definitions. Unless it is plainly evident from the context that a different meaning is intended all other terms used herein shall have the same meaning as they are defined to have in the Declaration or in Article 55, §79.41, Code of Virginia (1950) as amended. The word "Declarant" as used hereinafter refers to FORTY SIX HUNDRED CORPORATION. Unless otherwise indicated hereinafter, the term "Common Elements" shall include both "General" and "Limited" Common Elements.

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ARTICLE III

Membership

Section 1. Members. Every person, group of persons, corporation, trust or other legal entity, or any combination thereof, which owns a Condominium Unit within the Condominium Project shall be a member of the Owners' Association, provided, however, that any person, group of persons, corporation, trust, or other legal entity, or any combination thereof, which holds such interest solely as security for the performance of an obligation shall not be a member. Every member shall remain a member of said Association until such time as his membership ceases, for any reason, at which time his membership in said Association shall automatically cease.

Section 2. Membership Certificates. In the event the Board of Directors considers it necessary or appropriate to issue membership certificates or the like, then each such membership certificate shall state that the Owners' Association is organized under the laws of the State of Virginia, the name of the registered holder or holders of the membership represented thereby, and shall be in such form as shall be approved by the Board of Directors. Membership certificates shall be consecutively numbered, bound in one or more books, and shall be issued therefrom upon certification as to the transfer of title to the Condominium Unit to which such membership is appurtenant. Membership is not otherwise transferable. Every membership certificate shall be signed by the President or a Vice President and the Secretary or an Assistant Secretary and shall be sealed with the corporate seal.

Section 3. Lost Certificates. The Board of Directors may direct that a new certificate or certificates be issued in place of any certificate or certificates previously issued by the Owners' Association and alleged to have been destroyed or lost, upon the making of an affidavit of that fact by the person claiming the membership certificate to be lost or destroyed. When authorizing such issuance of a new certificate or certificates, the Board of Directors may, in its discretion, and as a condition precedent to the issuance thereof, require the registered holder of such lost or destroyed certificate or certificates, or his legal representative, to appear in person in such manner as the Board of Directors shall require and to give the Owners' Association a bond in such sum as the Board of Directors may require, and indemnity against any claim that may be made against the Owners' Association.

Section 4. Liquidation Rights. In the event of any voluntary or involuntary dissolution of the Owners' Association, each member of the Owners' Association shall be entitled to receive out of the assets of the Owners' Association available for distribution to the members an amount equal to that proportion of such assets which is shown in Exhibit D, to the Association.

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ARTICLE IV

Meeting of Members

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the Owners' Association or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meeting. The first annual meeting of the members of the Owners' Association shall be held within one hundred eighty (180) days after formation of the Owners' Association, as set forth in the "Declaration" of this Condominium Project. Thereafter, the annual meetings of the members of the Owners' Association shall be held on the first Wednesday of October each succeeding year. At such meeting, there shall be elected by ballot of the members a Board of Directors in accordance with the requirements of Section 5 of ARTICLE V of these By-Laws. The members may also transact such other business of the Owners' Association as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the members as directed by resolution of the Board of Directors or upon a petition signed by members representing at least twenty percent (20%) of the total votes of the Project having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of members representing four-fifths (4/5ths) of the votes present, directed in person or by proxy.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to the unit owner as members of record, by U. S. mail return receipt requested, at his address as it appears on the membership book of the Owners' Association, or if no such address appears, at his last known place of address, at least twenty-one (21) days but not more than ninety (90) days before such annual meeting, and seven (7) days prior to such special meeting. Service may be accomplished by the delivery of any such notice to the member at his condominium in the same manner. Notice may be delivered by the Secretary or his designee, provided a receipt of acceptance of such notice is obtained. Attendance by a member at any meeting of the members shall be a waiver of notice by him of the time, place and purpose thereof.

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Section 5. Quorum. The presence, either in person or by proxy, of members representing at least a majority of the total votes of the Condominium Project shall be requisite for, and shall constitute a quorum for the transaction of any business which affects the rights and duties of all unit owners. For any business which may result in an assessment, amendment of interest in a Limited Common Element, right or duty of fewer than all the unit owners, the presence, either in person or by proxy, of members of representing a majority of the votes of the units so affected shall constitute a quorum.

Section 6. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Voting. At every meeting of the members, each member present, in person or by proxy, shall have the right to cast the vote assigned to his Unit by Exhibit D of the Declaration on each question for each membership which he owns. The vote of the members representing a majority of the total votes of the Condominium Project, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Articles of Incorporation, or of the Declaration or of these By-Laws, a different vote is required, in which case such express provision shall govern and control. Notwithstanding the foregoing statement any question raised at a meeting which may result in an assessment, amendment of interest in a Limited Common Element, right or duty of fewer than all unit owners may be voted upon only by those unit owners who will or may be so affected and a majority vote shall carry the question. No amendment to any Condominium instruments shall alter any rights or obligations with respect to any Limited Common Elements without the consent of all unit owners adversely affected thereby. The vote of any member which is possessed by more than one person may be exercised by any one of them present at any meeting. If more than one owner of a unit is present, the vote may be cast by unanimous consent of said owners or by any one of them, provided no objections or protest by any other owner of such membership is noted at such meeting. No member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors who is shown on the books or management account of the Owners' Association to be more than thirty (30) days delinquent in any payment due the Owners' Association.

Section 8. Proxies. A member may appoint any other person or the Declarant as his proxy. Any proxy must be in writing and dated, the signature of the owners properly acknowledged and be filed with the Secretary in form approved by the Board of Directors before the appointed time of each meeting. Unless limited by its terms, any proxy shall terminate upon the adjournment of the meeting next following the expiration of the proxy or until sooner revoked by a written notice of revocation filed with the Secretary or by the member.

Section 9. Order of Business. The order of business at all regularly scheduled meetings of the regular members shall be as follows:

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- (a) Roll call and certification of proxies.
- (b) List of agenda of meeting or waiver of agenda.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of committees, if any.
- (e) Reports of committees, if any.
- (f) Election of inspectors of election.
- (g) Election of disbursements.
- (h) Confirmation of business.
- (i) New business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

ARTICLE V

Directors

Section 1. Members and Qualification. The affairs of the Owners' Association shall be governed by the Board of Directors hereinafter sometimes referred to as "Board of Directors" composed of at least seven (7) natural persons who shall (after the first annual meeting of members) be chosen by the Owners' Association. At least one of the Directors, but not more than two, shall be owners of commercial Condominium Units or if no Commercial Units have been conveyed, owners of the conventional space.

Section 2. Initial Directors. The Initial Directors shall be selected by the declarant and need not be members of the Owners' Association. Such Directors shall act from the date upon which the Declaration is recorded among the Land Records for the City of Alexandria, Virginia, until the first annual meeting of the members or until such time as their successors are duly chosen and qualified.

Section 3. Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the Condominium Owners' Association and the Condominium Unit Owners' Association and shall do all such acts and things as may be required by these By-Laws directed to be done by the Board of Directors. The powers and duties of the Board of Directors shall include, but not be limited to, the following:

(a) To provide for the care, upkeep and surveillance of the common areas, project and the Common Elements and services in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(b) To establish and provide for the collection of assessments and/or charges levied from the members and for the assessment and payment of liens therefor in a manner consistent with law and the provisions of these By-Laws and the Declaration.

(c) To provide for the designation, hiring and/or dismissal of the management company for the good working order of the project and for the proper care

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(d) To promulgate and enforce such rules and regulations, and such restrictions or limitations as may be deemed proper respecting the use, occupancy and maintenance of the Project and the use of the Common Elements as are designated to prevent unreasonable interference with the use and occupancy of the Condominium Project and of the Common Elements by the members, all of which shall be consistent with law and the provisions of these By-Laws and the Declaration.

(f) To establish a general operating reserve and/or a reserve for replacement or depreciation of Common Elements and to provide for the collection of such amounts.

(b) To have the irrevocable power of attorney in fact on behalf of all unit owners, and to execute in title to grant easements to the other properties and accept easements benefiting the other units.

Section 4.2: Management Agent. The Board of Directors may, by contract in writing, delegate some of its duties, powers or functions to a management organization (Management Agent). The Owners' Association and the Board of Directors shall not be liable for any omission or improper exercise by the Management Agent of any such duty, power or function as long as, at the expiration of two years from the creation or the termination, the Board of Directors shall notify any management agreement entered into within that time period to terminate such agreement.

Section 5. Election and Term of Office. The term of the Directors named herein shall be the term of the corporation shall expire when the term of the corporation has been elected at the first annual meeting of the corporation and are duly qualified. Such election shall be made by an officer, agent, or designated representative of the corporation but shall not be one of the directors named herein at the first annual meeting of the corporation, and the term of office of the four (4) elected Directors shall be for the greatest number of votes shall be fixed at the first annual meeting. The term of office of the elected Directors shall be for the fifth, sixth, and seventh years of the corporation, and shall be fixed at one (1) year. The election of the Directors in the number of votes for the election of the Directors shall be held among the members of the corporation. At the expiration of the term of office of the Directors, each respective elected Director shall be eligible for re-election. The Directors elected to serve after term of office shall hold office until the expiration of the term of office of the Directors and hold their first meeting.

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Section 6. Vacancies. Vacancies among the elected Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until a successor is elected by all the members at the next annual meeting to serve out the unexpired portion of the term.

Section 7. Removal of Directors. At a regular or special meeting duly called, any Director may be removed with or without cause by the affirmative vote of the majority of the entire membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than thirty (30) days delinquent in payment of any Assessments and/or carrying charges due the Owners' Association shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 6 of this ARTICLE. An appointed Director may be removed at any time and only by the party of institution having appointed him.

Section 8. Compensation. No compensation shall be paid to Directors for their services as directors. After the first annual meeting of the members, no remuneration shall be paid to any Director who is also a member of the Owners' Association for services performed by him for the Owners' Association in any other capacity unless a resolution authorizing such remuneration shall have been adopted by the Board of Directors before the services are undertaken.

Section 9. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the President at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, provided a majority of the whole Board of Directors shall be present.

Section 10. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held each year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least thirty (30) days prior to the day named for such meeting.

Section 11. Special Meetings. Special meetings of the Board of Directors may be called by the President on ten (10) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least one-third (1/3) of the Directors.

Section 12. Additional Notice Requirements. Copies of all notices for special meetings shall be

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sent to the Managing Agent and to one agent appointed for receipt of such notice by all holders of first mortgages or first deeds of trust. The failure to give the notice required by this section shall invalidate any action taken at such meeting.

Section 13. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director or any person required to receive notice under Section 12 of ARTICLE V, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the filing of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time, place and purpose thereof. If all the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 14. Quorum. At all meetings of the Board of Directors a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. Notice of such adjournment shall be provided in writing to the absent Directors at their Unit in the Condominium Project. At any subsequent meeting called pursuant to this sub heading, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 15. Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors.

Section 16. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Owners' Association handling or responsible for corporate or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Owners' Association.

ARTICLE VI

Officers

Section 1. Designation. The principal officers of the Owners' Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The President and Vice President shall be members of the Owners' Association. If the owner of a Condominium Unit who is serving as President or Vice President of the Owners' Association disposes of his Unit for a term greater than six months he may decline to serve as such officer. The owner of either a residential or Commercial Condominium who conveys his Unit in a Condominium which terminates his position as President or Vice President.

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A President or Vice President of the Owners' Association who is a Director, officer, trustee or partner of an owner of a unit who is not a natural person and ceases to have a relationship with the unit owner shall automatically be terminated as President or Vice President of the Owners' Association. The Secretary and Treasurer of the Owners' Association need not be members of the Owners' Association. The Directors may appoint an Assistant Secretary and an Assistant Treasurer and such other officers as in their judgment may be necessary. The office of Secretary and Treasurer may be filled by the same person.

Section 2. Election of Officers. The officers of the Owners' Association shall be elected annually by the Board of Directors at the organization meeting of each new Board and shall hold office at the pleasure of the Board of Directors.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed either with or without cause. He shall not be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Owners' Association. He shall preside at all meetings of the members and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of a corporation, including but not limited to the power to appoint committees from among the membership from time to time as he may, in his discretion, decide is appropriate to assist in the conduct of the affairs of the Owners' Association.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to perform the duties of the Vice President. The Vice President shall perform the duties as shall from time to time be determined by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the members of the Owners' Association. He shall have custody of the seal of the Owners' Association; he shall have charge of the membership registers and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Owners' Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name of the Owners' Association in such banks or institutions as from time to time be designated by the Board of Directors.

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ARTICLE VII

Liability and Indemnification
of Officers and Directors

Section 1. Liability and Indemnification of Officers and Directors. The Owners' Association shall indemnify every officer and Director of the Owners' Association against any and all expenses, including counsel fees, reasonably incurred by or in behalf of any officer or Director in connection with any action, suit or other proceeding (including the settlement of any such suit or proceeding if approved by the then Board of Directors of the Owners' Association) to which he may be made a party by reason of being or having been an officer or Director of the Owners' Association whether or not such person is an officer or Director at the time such expenses are incurred. The Officers and Directors of the Owners' Association shall not be liable to the members of the Owners' Association for any mistake of judgment, negligence, or omission, except for their own individual willful mismanagement or bad faith. The Officers and Directors of the Owners' Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Owners' Association or the Condominium Project (except to the extent that an officer or Director may also be owner of a unit in the Project). The Owners' Association shall not be liable to hold each such officer and Director responsible against any and all liabilities which he may be entitled to by contract or otherwise. No officer or Director of the Owners' Association is entitled to indemnification against any such contract or other commitment which he may be entitled to by contract or otherwise. The Owners' Association shall not be deemed to have assumed any liability which he may be entitled to by contract or otherwise, vote of stockholders, or otherwise.

Section 2. Common or Interested Parties. The Directors shall exercise their powers in good faith and with a view to the interests of the Owners' Association and the Condominium Project, and in the absence of any action between the Owners' Association and any other corporation, firm, partnership, or individual, or between the Owners' Association and any other corporation, firm, partnership, or individual (in which one or more of the parties to this Owners' Association are parties) which is voidable because such Director was interested in the transaction at the meeting of the Board of Directors or any committee thereof, which authorized or approved the transaction, or because his or their votes or counsel were used for the purpose, if any, of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common or interested party is disclosed or known to the Board of Directors by a majority thereof or noted in the minutes, and the transaction is authorized, approved, or ratified by the Board of Directors in good faith by a majority thereof for the purpose; or

(b) The fact of the common or interested party is disclosed or known to the Board of Directors by a majority thereof or noted in the minutes, and the transaction is authorized, approved, or ratified by the Board of Directors in good faith by a majority thereof for the purpose; or

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and they approve or ratify the contract of transaction in good faith and with sufficient for the purpose; or

(e) the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

One or more interested Directors may be counted in determining the quorum of any meeting of the Board of Directors or Committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote thereon to authorize any contract or transaction with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

ARTICLE VIII

Operation and Management of the Project

Section 1. Management and Common Expenses. The Owners' Association, through its Board of Directors, shall manage, operate and maintain the Condominium Project and, for the benefit of the Condominium Units and the Owners' Association, shall enforce the provisions hereof and shall pay out of the Common Expense fund hereinafter provided for, the cost of:

(a) the cost of providing heat, air conditioning, water, sewer, garbage and trash collection, electrical, gas and other services and the services for the Common Elements, the cost of which are not separately metered for each Condominium Unit, and for the Condominium Units, the costs of operating and maintaining any and all television and radio distribution systems, and recreational facilities, all of which may be done directly or through an independent contractor.

(b) the cost of fire and extended liability insurance on the Condominium Project, the cost of a master liability policy as described in the Declaration and the cost of insurance on the Owners' Association may be included.

(c) the cost of employing a firm to manage the Condominium Project to the extent deemed advisable by the Board of Directors together with the services of a firm or firms as recommended by the Board of Directors of the Owners' Association as may be necessary for the operation of the Condominium Project.

(d) the cost of such legal and accounting services as may be necessary to the operation of the Condominium Project.

(e) the cost of painting, maintaining, replacing, repairing and improving the Common Elements and such furnishings and equipment for the Common Elements as the Board of Directors shall determine are necessary and proper, and the Board of Directors shall have the exclusive right to determine the same; provided, however, that any element or item which shall require the Owner of a Condominium Unit to repair or otherwise maintain the same shall be the responsibility of the Owner of such unit, and not the Condominium or any fixtures, appliances, or equipment therein.

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(f) The cost of any and all other materials, supplies, labor, services, maintenance, repair, taxes, assessments or the like which the Board of Directors is required to secure or pay for by law, or otherwise, or which in the discretion of the Board of Directors shall be necessary of proper for the operation of the Common Elements, provided, however, that if any of the aforementioned are provided or paid for the benefit of a particular Condominium or Condominiums, the cost thereof shall be specially assessed to the owner or owners thereof in the manner provided in subsection (g) of Section 1 of this Article.

(g) The cost of the maintenance or repair of any Condominium Unit in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the health, safety or to preserve the appearance or value of the Condominium Project or is otherwise in the interest of the general welfare of all owners of Condominium Units, provided, however, that no such maintenance or repair shall be undertaken without reasonable written notice to the owner of the Condominium Unit proposed to be maintained or repaired, provided further that the cost thereof shall be assessed to the Condominium Unit which such maintenance or repair is performed and, when so assessed, the amount thereof shall be paid promptly to the owner of said Condominium Unit or which then the Assessment shall become due and payable and a continuing lien and obligation of said owner in all respects as provided in ARTICLE IX of the governing laws.

(h) Any amount necessary to discharge any lien or encumbrance levied against the Condominium Project, or any portion thereof, which may, in the opinion of the Board of Directors, constitute a lien against the Common Elements rather than the interest therein of the owner of any individual Condominium Unit.

(i) Any amount necessary to pay any and all taxes assessed against the property of the Condominium Project of the Declaration or other instrument, or any and all other taxes of whatever nature assessed on the property of the Condominium Project, or any and all assessments levied against the property of the Condominium Project or upon any property which may be required to pay, if any.

(j) Any amount deemed necessary or proper to be paid by the Board of Directors to replace or to repair or to replace of any Common Element.

Section 2. Management Agent. The Board of Directors shall employ for the Owner a management agent or organization (the "Management Agent") and its compensation and such other terms and conditions shall be established by the Board of Directors. The duties and services of the Management Agent shall from time to time and may include, but not necessarily be limited to, the duties set out in ARTICLE V and in subsection (d) of Section 3 and subsection (e) of Section 1 of this Article. The Board of Directors shall not change Management Agent without the prior approval of a majority of the members representing three-fourths of the votes of the Residential and Commercial Units present at any meeting of the Board of Directors.

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purpose except for the provisions of ARTICLE V, Section 4 herein.

Section 3. Duty to Maintain.

A. Residential and Commercial Units. Except for maintenance requirements herein imposed upon the Owners' Association, if any, the owner of any Residential or Commercial Condominium shall, at his own expense, maintain the interior of his Condominium and any and all equipment, appliances, or fixtures therein situate, in good order, condition and repair, and in such clean and sanitary condition as may at any time be necessary to maintain the good appearance of his Condominium Unit and shall, at his own expense, maintain, repair or replace any plumbing and electrical fixtures, outlets and receptacles, lighting fixtures, refrigerators, freezers, dishwashers, disposals, ranges, range hoods, and/or other equipment that may be in such Condominium Unit.

B. Street Front Commercial Units. The owner of a Street Front Commercial Unit shall maintain it and any improvements thereon at his own expense, in good order, condition, and repair, and in such clean and sanitary condition as may at any time be necessary to maintain the good appearance of his Condominium Unit.

Section 4. Windows and Doors. The owner of any Condominium shall at his own expense, clean and maintain the interior surfaces of all windows of the Condominium Unit.

Section 5. Access at Reasonable Times. For the purpose solely of performing any or all repairs or maintenance required or authorized by these Bylaws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Owners' Association through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the owner or occupant, to enter any Condominium Unit at any time considered to be reasonable under the circumstances.

Section 6. Easements for Utilities and Related Purposes. The Owners' Association is authorized and empowered to grant such licenses, easements, and other rights for sewer lines, water lines, telephone and cable distribution systems, electrical cables, mechanical cables, gas lines, storm drains, underground conduits and/or such other purposes related to the provision of public utilities to the Condominium Project as may be considered necessary and appropriate by the Board of Directors for the orderly maintenance, preservation and use of the Common Elements or for the preservation of the health, safety, convenience and/or welfare of the owners of the Condominiums or the Declarant.

Section 7. Limitation of Liability. The Owners' Association shall not be liable for any damages or expenses to be obtained by the Owners' Association or any person out of the Common Expense Fund for any loss or damage sustained to those enumerated in Article V, Section 4 hereof, or for injury or damage to any person or property caused by the Elements or by any person, or any person's Condominium Unit, or any other person, or any thing falling from any building, water, snow or ice which may fall from any building or portion of the Common Elements or from any person, or any person's conduit, appliance or equipment, or any thing falling from any person's Condominium Unit. The Owners' Association shall not be liable to the owner of any Condominium Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements, including but not limited to owner storage areas, pool and

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sauna locker rooms and other appurtenances. Except as hereinelsewhere provided, no damages shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, or to any Condominium Unit or from any action taken by the Owners' Association to comply with any law, ordinance or with the order or directive of any municipal or other governmental authority.

ARTICLE IX

Assessments

Section 1. Annual Assessments and Common Expenses. Each Residential and Commercial Owner shall pay in advance to the Owners' Association a monthly sum (hereinelsewhere sometimes referred to as "Assessments") equal to one-twelfth (1/12th) of the member's proportionate share of the sum required by the Owners' Association, as estimated by its Board of Directors, to meet its annual expenses, including but in no way limited to the following (all of which are sometimes elsewhere herein referred to as "Common Expense"):

(a) The cost of all operating expenses of the Condominium Project and services furnished, including charges by the Owners' Association for utilities and services furnished by it and all costs required to be paid by the Owners' Association as set forth in ARTICLE VIII, Section 1.(a) et seq. of these By-Laws.

(b) The cost of funding all reserves established by the Owners' Association, including when appropriate, a general operating reserve and/or a reserve for replacements; and

(c) The estimated cost of repairs, maintenance and replacements of the Condominium Project to be made by the Owners' Association.

The Board of Directors shall determine the amount of the Assessment annually, but may assess more frequent intervals should circumstances require.

The Assessments shall be based on the percentages of responsibility set forth in the Declaration.

The Board of Directors of the Owners' Association shall make reasonable efforts to fix the amount of the Assessment against each Condominium Unit for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the membership and assessment schedule thereto which shall be kept in the office of the Owners' Association and shall be open to inspection by any owner upon reasonable notice to the Board. Notice of the Assessment shall thereupon be sent to the members. The omission of the Board of Directors, before the expiration of any Assessment period, to fix the Assessments hereunder for that or the next period, shall not be

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deemed a waiver or modification in any respect of the provisions of this ARTICLE, or a release of any member from the obligation to pay the Assessment, or any installment thereof, for that or any subsequent Assessment period, but the Assessment fixed for the preceding period shall continue until a new Assessment is fixed. No member may exempt himself from liability for Assessments by a waiver of the use or enjoyment of any of the Common Elements appurtenant to it his Unit or by abandonment of any Unit belonging to him.

Each Residential and Commercial owner shall pay the Assessment within fifteen days of the receipt of the Notice of Assessment.

Section 2. Special Assessments. In addition to the regular Assessments authorized by this ARTICLE, the Owners' Association may levy in any Assessment year a special Assessment or Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement located on the Project, including the necessary fixtures and personal property related thereto, or for such other purposes as the Board of Directors may consider appropriate, provided that any such Assessment shall have the consent of the members representing two-thirds (2/3)ds of the total votes of those unit owners who will be assessed. A meeting of the members shall be duly called for this purpose, written notice of which shall be sent to all members at least seven (7) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of this meeting.

If the Assessment is for the capital improvement of a Limited Common Element, such Special Assessment shall be levied only against those affected owners and in proportion to their interest therein.

Section 3. Reserve for Replacements. The Owners' Association shall establish and maintain a reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be deposited in a special account with an institution the securities of which are insured by an agency of the United States of America (the Board of Directors may authorize the depositing of funds in such an institution in excess of the limit of such insurance if any portion of such funds are insured), or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed by, the United States of America. Such reserve shall be designated as applicable to one of the General or Limited Common Elements set out in a separate category in the Declaration and shall be drawn from Assessments on the Units to which the particular Common Element is appurtenant. The reserve fund replacements may be expended only for the purposes of effecting the replacement of those Common Elements, equipment of the Project and for operating contingencies of a nonrecurring nature applicable to the Project. Amounts required to be allocated to the reserve for replacements shall be considered as a portion of the Unit from which the Assessment was drawn and shall not be separately withdrawn, assigned or transferred or otherwise

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separated from the Unit to which it appertains and shall be deemed to be transferred with such Unit.

Section 4. Non-Payment of Assessment. Any Assessment levied pursuant to these By-Laws, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Condominium Unit or Condominium Units belonging to the member against whom such Assessment is levied and shall bind such Condominium Unit or Condominium Units in the hands of the then owner, his heirs, devisees, personal representatives and assigns, all in accordance with the provisions of Title 55.1-79.84, Code of Virginia (1950) as amended. The personal obligation of the member to pay such Assessment shall, however, remain his personal obligation for the statutory period and a suit to recover a money judgment for non-payment of any Assessment levied pursuant to these By-Laws, or any installment thereof, may be maintained without foreclosing or waiving the lien herein and by the aforesaid statute created to secure the same.

Section 5. Remedies for Non-Payment of Assessments. Any Assessment levied pursuant to the Constitution or these By-Laws, or any installment thereof, which is not paid within the ten (10) days after it is due, shall bear interest at a rate not to exceed ten percent (10%) per annum, and the Owners' Association may bring an action at law against the member personally obligated to pay the same, or foreclose the lien against the Condominium Unit or Units then belonging to such member, in either of which events interest costs and reasonable attorneys' fees of not less than twenty percent (20%) of the sum claimed shall be added to the amount of each Assessment. The Owners' Association shall be the holder of the first mortgage on any Condominium Unit for which any Assessment levied pursuant to these By-Laws becomes delinquent for a period in excess of thirty (30) days and in any other case where the owner of such Condominium Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 6. Assessment Certificate. The Owners' Association shall upon demand at any time furnish to any member liable for any Assessment levied pursuant to these By-Laws (or any other party lawfully interested in the same), a certificate in writing signed by an officer of the Owners' Association setting forth the status of said Assessment, i.e., whether the same has been paid or unpaid. Such certificate shall be evidence of the payment of any Assessment thereon and shall not be subject to a charge not to exceed TEN PERCENT (10%) of any Assessment levied in advance by the Owners' Association for such certificate so delivered.

The Owners' Association shall, upon demand at any time furnish to any member who is reselling his Unit, a certificate in writing signed by an officer of the Owners' Association setting forth a statement of any capital expenditures anticipated by the Owners' Association within the current or succeeding fiscal years and a statement of the status and amount of any reserve for replacement fund including the portion of such fund earmarked for any specified Project by the Board of Directors. A

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charge not to exceed TWENTY-FIVE DOLLARS (\$25.00) may be levied in advance by the Owners' Association for each certificate so delivered.

Section 7. Priority of Lien. The lien established by this ARTICLE and by TITLE 55, §79.04, Code of Virginia (1950) as amended, shall have preference over any other Assessments, liens, judgments or charges of whatever nature, except the following:

(a) General and special Assessments for real estate taxes on the Condominium Unit; and

(b) The liens of any mortgage duly recorded on said Condominium Unit after receipt of a written statement from the Board of Directors reflecting that payments on said lien were current as of the date of recordation of said mortgage.

Section 8. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any Assessment levied pursuant to these By-Laws upon any Condominium Unit in the Project shall be subordinate to, and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such Unit made in good faith and for value received, provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to a sale or transfer of such Condominium Unit pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Condominium Unit from liability for any Assessments thereafter becoming due, nor shall the lien of any such subsequent Assessment, when said lien, if any, claimed shall have the same effect and enforcement in the same manner as provided herein. This provision shall in no way defeat the right of said purchaser to a claim of action against the transferor for reimbursement of said Assessment.

No amendment to this Article shall affect the rights of the holder of any such indebtedness (or the indebtedness secured thereby) recorded prior to the date of such amendment unless the holder of the indebtedness secured thereby shall consent in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (or the indebtedness secured thereby) not otherwise entitled thereby.

Section 9: Additional Details. Any recorded first mortgage secured by a Condominium Unit in the Project shall provide that any default by the mortgagee in the payment of any Assessment levied pursuant to these By-Laws, or any installment due thereon, shall constitute a default in such mortgage (or the indebtedness secured thereby) but failure to make such provision in any such mortgage shall not affect the validity or priority thereof and the protection afforded to the holder of such first mortgage (or the indebtedness secured thereby) by reason of Section 7 of this Article shall be preserved, modified or diminished by no other provision.

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Section 10. Definition. As used in these By-Laws, the term "Mortgage" shall include deed of trust and term "holder" or "mortgagee" shall include the party secured by any deed of trust or any beneficiary thereof.

ARTICLE X

Use Restrictions

Section 1. Residential Condominium Unit. Condominium Units on floors 5 through 16 shall be used for private residential purposes exclusively except for such temporary non-residential uses as may be permitted by the Board of Directors from time to time. Nothing in this Section, or hereinafter, shall be construed to prohibit the Declarant from the use of any Condominium Unit which Declarant owns for offices, promotion, marketing or display purposes as "model apartments" for the period of the easement to facilitate sale set out in the Declaration or from leasing any Condominium Unit or Units which Declarant owns.

Section 2. Commercial Condominium Unit. The Condominium Units and convertible space on floors 3 and 4 shall be used as Commercial Units except for the provisions herein relating to the Declarant's right to convert convertible space and the right of any owner, other than Declarant, of Commercial Units to convert such Units to Residential Units upon written notice to the Board. The Street-Front Commercial Units may be used for any purpose allowed by law.

Section 3. Financial Responsibility, etc. The right to use or occupy any Condominium Unit within the Project, reside therein permanently or otherwise, and the right to sell, lease or otherwise transfer or convey any Condominium Unit may be subject to such unit and objective standards relating to financial responsibility and/or character as may now or hereafter be set forth in these By-Laws. No such restriction shall be based upon race, religion, sex, age or place of origin.

Section 4. Leasing. No Condominium Unit designated a Residential Unit shall be used for transient or hotel purposes or, in any event, for less than six (6) months, nor shall any customary hotel services, such as room service, food and beverage service, maid service, laundry or bellboy service be furnished. No portion of any Residential Condominium Unit (other than the entire Condominium Unit) shall be leased for any period. Any lease shall contain a provision to the effect that the right of the tenant to use and occupy the Condominium Unit shall be subject and subordinate in all respects to the provisions of the Declaration and these By-Laws and to such rules and regulations adopted by the Board of the Common Elements, or other "By-Laws" of the Board of Directors may from time to time be made. The provisions of this subsection shall apply to any institutional mortgagee of any Condominium Unit which comes into possession of the Unit as a result of a foreclosure sale or other judicial sale or as a result of a deed in lieu of foreclosure. The owner of any Residential Unit must provide in any lease or sublease to any tenant or subtenant shall comply in all respects with the Declaration, By-Laws, and rules and regulations adopted by the Board of Directors.

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Section 5. Prohibited Use of Residential and Commercial Units.

(a) No noxious or offensive activity shall be carried on in any Residential or Commercial Condominium Unit nor shall anything be done or be permitted to remain in any Condominium Unit which may be or become a nuisance or annoyance to the other owners. Residents of FORTY SIX HUNDRED CONDOMINIUM shall exercise care not to disturb other residents with excessive noise.

(b) There shall be no obstruction of any Common Elements. Nothing shall be stored upon any Common Elements (excepting those areas designated for storage of personal property by the owners of the Condominiums) without the approval of the Board of Directors. Vehicular parking upon Limited Common Elements may be regulated or assigned by the Board of Directors consistent with the Declaration and these By-Laws.

(c) Nothing shall be done or maintained in any Condominium Unit or upon any Common Elements which will increase the rate of insurance for any Condominium Unit or any Common Elements, or result in the cancellation thereof, without the prior written approval of the Board of Directors. Nothing shall be done or maintained in any Condominium Unit or upon any Common Elements which would be in violation of any laws, ordinances or regulations which are applicable to the Condominium.

(d) No structural alteration, construction, addition, or removal of any Residential or Commercial Condominium Unit or Common Elements shall be commenced or conducted except in strict accordance with the provisions of the Declaration and these By-Laws.

(e) No animals, livestock, poultry or birds, other than common household pets shall be maintained in any Condominium Unit. Cats, dogs, birds or dogs or combination thereof shall not be maintained in any Unit. No common household pet shall be maintained which weighs in excess of twenty-five (25) pounds. Common household pets shall not be kept, bred or maintained for commercial purposes in a Condominium Unit.

All pets must be registered with the Board of Directors and shall be the absolute responsibility of the respective unit owner. All dogs, while outside of any Unit shall remain on a leash and must be curled. All pet owners shall be responsible for the removal of any excrement left by the pet on the Common Elements. Each pet owner is responsible for any damage caused to the Common Elements or to any other Unit by the pet.

(f) Except for such signs as may be posted by the Declarant for promotional or marketing purposes, no signs of any character shall be erected, placed or displayed upon, in, from or about any Condominium or Common Elements. No owner or owners of any Unit of FORTY SIX HUNDRED CONDOMINIUM shall erect, place or display a sign of any character upon, in, from or about any Building or elsewhere on the Premises, except in the designated areas specified by the Owner. The owner of a Commercial Condominium may place a sign on the door of his Condominium Unit or on the exterior of the building as is appropriate, but no owner may place a sign in or upon a window on the exterior of the building.

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(g) No part of the Common Elements shall be used for commercial activities of any character except for the normal use of the Common Elements on floors 3 and 4. This subsection shall not apply to the use of Condominium Unit by the Declarant for display, marketing, promotional or sales, or business purposes.

(h) No burning of any trash and no unreasonable or unsightly accumulation or storage of litter, new or used building materials, or trash of any other kind shall be permitted within any Condominium Unit or upon any Common Elements. Trash and garbage containers shall not be permitted to remain in public view, but shall be deposited in the receptacles provided for that purpose.

(i) No structure of a temporary character, trailer, tent, shack, barn or other outbuilding shall be maintained upon any Common Elements at any time. No clothing, laundry, rugs or wash shall be hung from or spread upon any window or exterior portion of a Condominium Unit or in or upon a Common Element.

(j) No owner or other resident shall install any electrical or telephone wires, television antenna, or other antenna, air conditioning unit or other machine or device on the exterior of the Building in FORTY SIX HUNDRED CONDOMINIUM or in such a fashion that it protrudes through the roof or any windows, or any walls of the Building.

(k) There shall be no violation of any rules and regulations for the use of the Common Elements or other "house rules", which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere by these By-Laws authorized to adopt such rules.

ARTICLE XI

Architectural Control and Alteration of Unit Exterior

Section 1. Architectural Control. Except for the original construction of the Condominium Unit situated within the Project and any improvements on any Condominium Unit or to the Common Elements by the Declarant, and except for purposes of present maintenance and repair or as otherwise in these By-Laws provided, it shall be prohibited to install, erect, alter, modify, place, hinge, screw, nail, build, place, or construct any lighting, shades, screens, awnings, balconies, fences, aerials, antennas, radiators, television sound-casting or receiving devices, signs, walkways, curbs, gutters, patios, porches, driveways, walls or do any change or otherwise alter (including any alteration in color) in any manner whatsoever to the exterior of any Residential or Commercial Condominium or upon any of the Common Elements within the Project until the complete plans and specifications, showing the location, nature, shape, height, material, color, type of construction

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and/or any other proposed form of change (including, without limitation, any other information specified by a Board of Directors or its designated committee) shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board of Directors. Nothing contained in the Section shall be deemed to empower the Board of Directors to authorize any change in conflict with any provision of the Declaration.

In the event the Board of Directors, or its designated committee, fails to approve or disapprove such design and location within ninety (90) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. The Section shall not apply to any Street-Front Commercial Unit.

Section 2. Reassignment of Limited Common Elements.
A unit owner who desires to assign the Limited Common Elements located in the parking garage, parking structure, and/or storage area and appurtenant thereto must do so by a written application to the President of the Owners' Association or his designated agent. The President or his designee shall forthwith prepare and execute an amendment to the Declaration, and file the same with the exhibits thereto, reassigning all rights, responsibilities and obligations which apply to the Limited Common Elements. Upon execution of the reassignment, the President shall deliver to the unit owners involved a prepared document together with an invoice for the costs of preparation. Such amendment shall not be effective until the reassignment is recorded and acknowledged by all unit owners involved in the reassignment together with the receipt of the preparation costs. Approval of the application for reassignment of a Limited Common Element shall be by majority vote of the Board of Directors. Any assignment or reassignment is subject to the prior written approval of the holder of any first mortgage encumbering the unit from which the assignment is to be made.

Section 3. Relocation of Boundaries Between Units.
The unit owners who desire to relocate the boundaries between their Units must notify in writing the Board of Directors whose responsibility it shall be to (1) to approve such notice within 45 days; (2) upon such approval to forthwith prepare and execute an amendment to the Declaration identifying the Units and describing the conveyance between the unit owners; (3) accept the reasonable reallocation made by the Board of Directors as between the Units of the unit owners involved in the Common Elements appertaining to the Units; (4) accept the reasonable reallocation made by the Board of Directors as between the Units of the unit owners involved of the number of votes in the Owners' Association assigned to the Units, including the proportionate reallocation of liability for Common Expenses and rights to common profits; (5) prepare amendments to these By-Laws to reflect the same.

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ing the reallocation of undivided interest in the Common Elements and votes in the Owners' Association and liability for Common Expenses and rights to Common Profits; (6) have prepared by a registered architect or engineer such changes in boundaries of the appropriate Units; (7) assess to the unit owners involved the cost of the preparation of the documents required hereby. The unit owners undertaking such relocation shall obtain the prior written approval of the holders of first mortgages encumbering the respective Units, and bear all the costs of undertaking the relocation of the boundaries. The unit owners must supply with the notice to the Board of Directors, proof that the relocation will in no way weaken the structural integrity of the Building.

It shall be the duty of the unit owners involved to record the amendments and documents in accordance with these By-Laws and the laws of any political division of the State of Virginia.

Section 4. Subdivision of a Unit. Upon written notice to the Board of Directors by a unit owner of a Commercial Unit of his intention to subdivide his Unit, the Board of Directors shall within 45 days approve such notice by majority vote and prepare and execute the following: (1) an amendment to the Declaration assigning new identifying numbers to the new Units created together with a reasonable reallocation of the undivided interest in the Limited Common Elements acceptable to the subdividing owner who may specify in his written application that this assignment shall be made to one or more but less than all of the new Units. If the subdividing owner specifies no allocation of the Limited Common Elements between new Units, the new Units shall jointly share all rights and shall be equally liable jointly and severally for all obligations of the original Unit; (2) an amendment to these By-Laws, acceptable to the subdividing owner, reasonably allocating to the new Units the votes in the Owners' Association and a proportionate allocation based on the size of the new Units of the liability for Common Expenses and rights to common profits including an assignment of the undivided interest in the Common Elements; (3) have prepared by a registered architect or engineer an amendment to the plans and plans indicating the new boundaries and identifying numbers; (4) deliver to the subdividing owner the above documents together with an invoice for the cost of their preparation.

The subdividing owner shall record the above documents and pay all costs hereof in accordance with these By-Laws and the laws of any political division of this state before construction of the subdivision may commence. The subdividing owner must bear the costs of undertaking the subdivision of his Unit.

This Section shall have no application to conversion of convertible space.

Section 5. Alteration within a Unit. A unit owner who acquires an adjoining Unit shall be deemed to remove any part of the intervening partition wall, upon written application to the Board of Directors, demonstrating that such removal will in no way weaken the structural bearing column and that it is in the best interest of the Association.

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other than the partition itself, will be damaged, destroyed, or endangered. A unit owner may make improvements or alterations within his Unit which do not impair the structural integrity of the Building or lessen the support for any portion of the Condominium. No Residential or Commercial owner may make any improvements or changes which will change the exterior appearance of the Condominium Project. Any unit owner making alterations pursuant to this Section shall obtain the prior written approval of all holders of first mortgages encumbering both Units.

Section 6. Conversion of Convertible Spaces. The Declarant may convert all or any portion of any convertible space into one or more Units and/or Common Elements, including, without limitation, Limited Common Elements. The Declarant shall prepare, execute, and record an amendment to the Declaration describing the conversion. Such amendment shall assign an identifying number to each Unit formed out of a convertible space and shall allocate to each Unit a portion of the undivided interest in the Common Elements appertaining to that space. Such amendment shall describe or delineate the Limited Common Elements formed out of the convertible space, showing or designating the Unit or Units to which each is assigned. If all or any portion of any convertible space is converted into one or more Units in accordance with this section, the declarant shall prepare an amendment, and record simultaneously with the amendment to the Declaration, an amendment to the By-Laws, allocating voting in the Unit Owners' Association, rights to future common profits and liabilities for future Common Expenses but specially assessed.

The Board of Directors shall execute the documents and amend the Condominium Instruments as required by the Section herein for subdivision of Units but shall have no authority of approval or denial of such conversion.

ARTICLE XXII

Insurance

Section 1. Insurance. The Board of Directors shall obtain and maintain, to the extent practicable, the following:

(a) Insurance on the Project in an amount equal to one hundred percent (100%) of the replacement value (i.e. 100% of "replacement cost" of the Building and Limited Common Elements (as determined by the Board of Directors) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation. Such coverage shall afford protection for at least the following:

(i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;

(ii) such other risks as shall customarily be covered with respect to Projects of the type, location and use, including, but not limited to, terrorism,

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malicious mischief, boiler and machinery explosion or damage, and such other insurance as the Board of Directors may from time to time determine; and

(iii) a master liability policy covering the Unit Owners' Association, the Board of Directors, the Managing Agent, all agents and employees of the above and all unit owners in residence or their tenants in residence.

(b) Public Liability Insurance in such amounts and in such forms as may be considered appropriate by the Board of Directors including but not limited to, water damage, legal liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership and/or use of the Condominium Project or any portion thereof; and

(c) Workmen's compensation insurance to the extent necessary to comply with any applicable law; and

(d) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

Section 2. Limitations. Any insurance obtained pursuant to the requirements of this ARTICLE shall be subject to the following provisions:

(a) All policies shall be written with a company or companies licensed to do business in the State of Virginia and holding a rating of "A" or better, by Best's Insurance Reports and a comparable rating of "A" or better.

(b) Exclusive authority to negotiate losses under said policies shall be vested in the Board of Directors or its authorized representative, including any trustee with which the Owners' Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall hereinafter be referred to as the "Insurance Trustee" and all proceeds covering any loss shall be payable to the Insurance Trustee, or to his successor. All proceeds from an insured loss under such policy shall be held for the use and benefit of the Owners' Association and the owners of appropriate Condominium Units and their respective mortgagees as interest may appear. Such insurance proceeds shall be applied and distributed in accordance with the articles relating to insurance in the Declaration and these By-laws.

(c) In no event shall the insurance coverage obtained and maintained pursuant to the requirements of this ARTICLE be brought into competition with insurance purchased and issued in the name of any individual Condominium Unit owner purchased or hereinafter permitted by such owner of a Condominium Unit or the mortgagee of such "no other insurance" or similar clause in any policy obtained by the Owners' Association pursuant to the requirements of this ARTICLE shall be given any preference from consideration.

(d) All policies shall be given such notice as may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and all insureds named thereon, including any and all mortgagees of the Condominium Units.

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(e) All fire and other hazard insurance policies shall provide that, notwithstanding any provisions thereof which give the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable when in conflict with the provisions of these by-laws.

(f) All policies shall contain a waiver of subrogation by the insurer as to any and all claims against the Owners' Association, the Board of Directors, their agents and employees, the respective Condominium Unit Owners, their Unit employees and agents. Independent contractors shall not be considered agents, employees or servants of the Board of Directors or of the respective Condominium Unit owners within the meaning of said waiver.

(g) The insurance policy shall contain a provision that the insurance shall not be prejudiced:

(i) By any act or neglect of any occupants or owners of the Building when such act or neglect is not within the control of the Condominium Unit owners collectively; or

(ii) By failure of the Condominium Unit owners collectively to comply with any warranty or condition with regard to any portion of the premises over which the Condominium Unit owners collectively have no control.

Section 3. Individual Policies - Recommendation of Declarant. The owner of any Condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a "tenant-owner's endorsement" for improvements and betterments to the Condominium Unit made or acquired at the expense of the owner) at his own expense. Such insurance shall be written either by the same carrier as that purchased by the Board of Directors pursuant to this ARTICLE or if written by another carrier, shall provide that it shall be without contribution as against the same. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 2(f) of these by-laws. The Declarant recommends that each owner of a Condominium Unit in the Project obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a "Tenant's Homeowners Policy" or equivalent, to insure against loss or damage to personal property used or incidental to the occupancy of the Condominium Unit, additional living expenses, and other valid claims such as fire, theft, personal liability and the like. Such policy should include a "tenant-owner's endorsement" covering losses to improvements and betterments to the Condominium Unit made or acquired at the expense of the owner.

ARTICLE XXII

Casualty Damage - Reconstruction or Repair

Section 1. Use of Insurance Proceeds. In the event of damage or destruction of any residential or commercial Unit by fire or other casualty, the same shall be promptly repaired or reconstructed in a substantial conformity with the original plans and specifications, to the extent of insurance available therefor, if any.

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Section 2. Proceeds Insufficient. In the event that the proceeds of insurance are not sufficient to repair damage or destruction to any Residential or Commercial Unit by fire or other casualty, or in the event such damage or destruction is caused by any casualty not herein required to be insured against, then the repair or reconstruction of the damaged Common Elements shall be accomplished promptly by the Owners' Association at its Common Expense, such Common Expense shall be assessed in accordance with the interest in the Common Element damaged. The repair or reconstruction of any Residential or Commercial Condominium Unit shall be accomplished promptly by the Owners' Association at the expense of the owner of the affected Condominium Unit. The ratable share of the expense of such repairs or reconstruction may be assessed and the lien for the same shall have all the priorities provided for in ARTICLE IX of these By-Laws.

Section 3. Restoration Not Required. In the event more than two-thirds (2/3rds) of the total number of Residential and Commercial Condominium Units in the Project are substantially damaged or destroyed by fire or other casualty and members do not promptly resolve to proceed with repair or reconstruction in the manner set forth in the Declaration, then and in that event the Project shall be deemed to be damaged in enough by the owners of all of the Residential and Commercial Condominium Units in the Project so that the Project shall be subject to partition and the Project shall be subject to partition and partition at the suit of the owner of any Residential and Commercial Condominium Unit or the holder of any Lien thereon, in which event the net proceeds of sale, proceeds with the net proceeds of any insurance paid to the Owners' Association or its members, shall be considered as one fund and shall be distributed to the owners of all the Condominium Units in the Project in proportion to their previously established for ownership of appurtenant undivided interests in the Common Elements, as set forth in Exhibit D attached hereto, each unit paying out of the share of the owner of any Condominium Unit, to the extent such share is not paid, and the net proceeds, all liens upon said Condominium Unit, in the event that either of the Street-Front Units or its common destroyed by casualty damage, shall not have in the distribution of proceeds.

ARTICLE IV

Fiscal Management

Section 1. Fiscal Year. The Fiscal year of the Owners' Association shall begin on the first day of January every year. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate.

Section 2. Books and Accounts. The books and accounts for the Owners' Association shall be kept under the direction of the Treasurer in accordance with good accounting practices consistently applied.

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Section 3. Auditing. At the close of each fiscal year, the books and records of the Owners' Association shall be audited by an independent certified public accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards consistently applied. Based upon such report, the Owners' Association shall furnish its members with an annual financial statement including the income and disbursement of the Owners' Association.

Section 4. Inspection of Books. The books and accounts of the Owners' Association, and vouchers supporting the entries made thereupon, shall be available for examination by the members of the Owners' Association and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Condominium Unit and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interests as members. Such inspection shall be allowed upon reasonable notice is given to the custodian of the books and accounts, but in no event may such inspection be employed to harass or unreasonably disrupt the normal operation of the custodian. The holder of any first mortgage shall have the right to request the submission of such financial and other financial data of the Owners' Association.

Section 5. Execution of Documents. With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Owners' Association by either the President or Vice President, and all checks shall be executed on behalf of the Owners' Association by such officers, agents or other persons as are from time to time so authorized by the Board of Directors.

Section 6. Seal. The Board of Directors shall provide a suitable corporate seal containing the name of the Owners' Association, which seal shall be in the charge of the Secretary. If so directed by the Board of Directors, a duplicate seal may be used by the Secretary.

ARTICLE IV

Amendment

Section 1. Amendments. Any amendment to these By-Laws shall require the affirmative vote of a majority (80%) of the total votes of the members of the Association at any meeting of the members duly called and held for that purpose, and shall become effective upon filing of a copy of the amendment among the Land Records for the County of Loudoun, Virginia, of an amendment to the Declaration of Condominium, Exhibit E to the Declaration of Condominium, and any other instrument to these By-Laws and only after the amendment has been given prior written notice to the members of the Association and all first mortgages on the Condominium Project. Amendments may be proposed by the Board of Directors or by petition signed by at least fifteen percent (15%) of the members of the Condominium Project. A declaration of any amendment shall accompany the petition and shall be filed with the petition at a special meeting at which such amendment shall be voted upon.

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ARTICLE XVI

Mortgages - Notice

Section 1. Notice to Board of Directors. Any owner of any Condominium Unit in the Condominium Project who mortgages such Unit shall promptly notify the Board of Directors of the name and address of his mortgagee, and, if requested so to do, shall file a certified copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

Section 2. Definition. As used in this ARTICLE, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees, and the term "mortgage" shall include deed of trust. As used generally in these By-Laws, the term "institutional lender" or "institutional mortgagee" shall include banks, trust companies, insurance companies, savings and loan associations, pension funds, and any corporation, including a corporation of, or affiliated with, the United States Government, or an agency thereof.

ARTICLE XVII

Compliance - Interpretation - Miscellaneous

Section 1. Compliance. These By-Laws are set forth in compliance with the requirements of Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended.

Section 2. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended. All of the terms hereof, except where expressly exempted by the context, shall have the same meaning as in the Declaration or the aforesaid statutes. In the event of any conflict between these By-Laws and the Declaration, the provisions of the Declaration shall control; and in the event of any conflict between the aforesaid Declaration and Title 55, §79.39 through and including §79.103, Code of Virginia (1950) as amended, the provisions of the statutes shall control.

Section 3. Notices. Unless another type of notice is herein elsewhere specifically provided for, and all notices called for in the Declaration or in the By-Laws shall be given in writing.

Section 4. Severability. In the event any provision or provisions of these By-Laws shall be determined to be invalid, void or unenforceable, the remainder shall not render invalid, void or unenforceable any other provisions hereof which can be given effect.

Section 5. Waiver. No failure to exercise a right or provision of these By-Laws shall constitute a waiver of such right or provision, nor shall any such failure be abrogated or waived by subsequent failures to enforce the same.

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Section 6. Captions. The captions contained in these By-Laws are for convenience only and are not a part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

Section 7. Gender, etc. Whenever in these By-Laws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

Section 8. Arbitration. A dispute arising between the Owners' Association, a unit owner, a Tenant in residence, or an assignee of any of these or a dispute between unit owners, their Tenants, or assignees shall be submitted to arbitration in accordance with the rules of the American Arbitration Association and the judgment thereby rendered shall be binding on all parties and may be presented in any Court having jurisdiction of the dispute.

VIRGINIA:
In the Clerk's office of the Circuit
Court-City of Alexandria this deed
was received and the taxes imposed by
Sec. 62-641 in the ... of \$
have been paid to ... the Annexed
certificate submitted to record on

6-16-75

3:30 P.M.

William H. Frank

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Alexandria Division

In re:

GORDON PROPERTIES, LLC,

Debtor.

GORDON PROPERTIES, LLC,

Plaintiff,

vs.

FIRST OWNERS' ASSOCIATION OF
FORTY SIX HUNDRED CONDOMINIUM,
INC.,

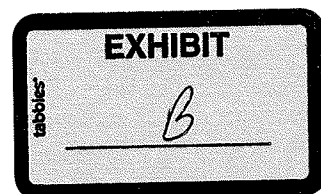
Defendant.

Case No. 09-18086-RGM
(Chapter 11)

Adv. Proc. No. 09-1304

MEMORANDUM OPINION

This case is before the court on Gordon Properties, LLC's Motion for a Preliminary Injunction to Enforce Automatic Stay and First Owners' Association of Forty Six Hundred Condominium, Inc.'s opposition. The debtor asserts that the unit owners association denied it the right to vote at the October 7, 2009 annual meeting in violation of the automatic stay, 11 U.S.C. §362(a), and requests that the annual meeting which was adjourned sine die be reconvened. The court will deny the motion. While the actions of which the debtor complains were an abuse of power, they were not an effort to collect a pre-petition debt.



Background

Forty Six Hundred Condominium consists of a main high-rise apartment building with both residential and commercial units and two commercial units adjacent to the high-rise building. One of the adjacent commercial units, a restaurant, is owned by the debtor. A dispute arose some years ago about the proper amount of condominium assessments that the restaurant unit should pay. The Board of Directors levied a significant condominium assessment against the restaurant unit which resulted in a number of law suits in state court. A judgment in favor of the unit owners association is presently on appeal to the Supreme Court of Virginia. The debtor owned a total of forty condominium units at the time of the 2009 annual meeting which constituted 19.7179% of the votes in the unit owners association.

The debtor was denied its right to vote as to all its condominium units at the 2007 and 2008 annual meetings and a special meeting held in June 2009, because it was delinquent in the payment of its condominium fees on the restaurant unit. By-Laws Article IV, Section 7.¹ No annual meeting has been held since 2006 because there was no quorum at the 2007 or 2008 annual meetings or at the June 2009 special meeting. A quorum is a majority of votes in the unit owners association. By-Laws Article IV, Section 5.² The members of the Board of Directors serve two-year terms, but

¹Article IV, Section 7 of the By-Laws provides:

Section 7. Voting. At every meeting of the members, each member present, in person or by proxy, shall have the right to cast the vote assigned to his Unit . . . on each question for each membership which he owns. . . . No member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors who is shown on the books or management account of the Owners' Association to be more than thirty (30) days delinquent in any payment due the Owners' Association.

²Article IV, Section 5 of the By-Laws provides:

Section 5. Quorum. The presence, either in person or by proxy, of members representing at least a majority of the total votes of the Condominium Project shall be requisite for, and shall constitute a quorum for the transaction of any business which affects the rights and duties of all unit owners.

remain in office until their successors are elected.³ The Board presently consists of seven members, four of whom are hold-over directors. They were elected in 2005 and 2006 and continue to hold office until their successors are elected. Three members were appointed to the Board by the incumbent members to fill vacancies. By-Laws Article V, Section 6.⁴

The assessment against the restaurant unit was unpaid when this bankruptcy case was filed on October 2, 2009. The debtor immediately sought a preliminary injunction asserting that enforcement of Article IV, Section 7 of the By-Laws violated the automatic stay imposed by §362 of the United States Bankruptcy Code because it was an act to collect a pre-petition debt. It sought to enjoin the unit owners association from denying it the right to vote at the annual meeting scheduled to be held on October 7, 2009. The hearing on the motion was held on October 7, 2009, just hours before the annual meeting was scheduled to commence. Without deciding whether enforcement of Article IV, Section 7 violated 11 U.S.C. §362(a), the court declined to issue a preliminary injunction because the short time the parties had to prepare for the hearing was insufficient to permit them to be fully prepared for the hearing.

The October 7, 2009 Annual Meeting

³Article V, Section 5 of the By-Laws provides:

Section 5. Election and Term of Office. . . . At the expiration of the initial term of office of each respective elected Director, his successor shall be elected to serve a term of two (2) years. The Directors shall hold office until their successors have been elected and hold their first meeting.

⁴Article V, Section 6 of the By-Laws provides:

Section 6. Vacancies. Vacancies among the elected Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected by all the members at the next annual meeting to serve out the unexpired portion of the term.

The annual meeting was called to order a few hours after the court hearing on October 7, 2009. A quorum was ostensibly not present.⁵ Members representing 38.1467% of the votes of the unit owners association registered for the meeting.⁶ The debtor registered its 19.7179% of the votes of the association. Two other individuals who, independently of the debtor, solicited and obtained proxies also registered themselves and their proxies. Of the remaining 18.4288% of the vote that registered for the meeting, the two individuals held about 15% of the total votes. The debtor and the two individuals held the overwhelming majority of the votes registered, approximately 92%.

The Chairman of the Elections Committee reported to the Chair of the annual meeting that there was no quorum. The Chair then announced that there was no quorum, asked for a motion to adjourn, recognized the Chair of the Elections Committee who moved to adjourn, heard a second, took a voice vote, announced that the motion passed and, without recognizing anyone else or providing sufficient time for anyone else to speak or seek recognition, adjourned the meeting.

In fact, the motion was defeated by an overwhelming majority. The debtor and the two individuals holding proxies all voted against the motion.

The vote was significant. The vote to adjourn sine die, that is, adjourn without setting a date to reconvene, meant that there would be no annual meeting and no election of members of the Board of Directors until the next annual meeting a year away. The incumbent directors remained in office

⁵Three members of the Board of Directors and the Chair of the Elections Committee were present at the meeting. None registered. None was counted as part of the quorum. By-Laws Article IV, Section 5 as well as the Virginia Condominium Act define quorum in terms of presence. Presence, as the By-Laws states, is "either in person or by proxy." Va.Code (1950) 55-79.76(a) and By-Laws Article IV, Section 5. Whether one votes or does not vote, wants to vote or does not want to vote, does not change the fact that one is either present (in person or by proxy) or not present. Their presence brought the meeting closer to a quorum. The presence of other unit owners who did not register raises the question of whether a quorum was, in fact, achieved.

⁶The procedure the unit owners association utilized was to register individuals and proxies at the door of the meeting. Only those who registered were counted for quorum purposes and were entitled to vote.

because no successors were elected. (Their terms expired in 2007 and 2008.) All proxies expired. A motion to adjourn to a specific date would have adjourned the meeting to a particular date to allow further efforts to obtain a quorum. The proxies would not have expired and could have been exercised at the adjourned meeting.

The debtor asserts that the unit owners association denied it its vote in violation of the automatic stay. The unit owners association asserts that enforcement of Article IV, Section 7 of the By-Laws does not violate the automatic stay and that it did not, in fact, deny the debtor its right to vote.

Discussion

Does Enforcing By-Laws Article IV, Section 7 Violate the Automatic Stay?

The automatic stay prohibits all acts to collect a pre-petition debt.⁷ Not only are significant acts such as suing a debtor or enforcing a judgment prohibited, but less dramatic acts are also prohibited. For example, mailing bills even though there is no threat to sue or take other collection action violates the automatic stay. *In re Robinson*, 2008 WL 4526183 (Bankr.E.D.Va.2008) (“By sending the invoices to the debtor, [the creditor] effectively sought payment of the prepetition amounts outside of the bankruptcy case, and as such, her actions violated the automatic stay”); *In re Torres Lopez*, 2006 WL 3898307 (Bankr.D.P.R. 2006) (collection letter advising that water, electricity and phone services in a condominium would be discontinued if payment was not received); *In re Crudup*, 287 B.R. 358 (Bankr.E.D.N.C.2002) (letters to debtor’s wife and parents-in-law); *In re Wills*, 226 B.R. 369, 378 (Bankr.E.D.Va.1998) (sending invoices post-petition); *In re*

⁷Section 362(a)(6) provides that “a petition . . . operates as a stay, applicable to all entities, of . . . any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case.”

Smith, 185 B.R. 871 (Bankr.M.D.Fla.1994) (letter to debtor's employer); *Sechuan City, Inc. v. North American Motor Inns, Inc. (In re Sechuan City, Inc.)*, 96 B.R. 37 (Bankr.E.D.Pa.1989) (landlord posted signs at debtor-restaurant urging public not to patronize restaurant); *In re Aponte*, 82 B.R. 738 (Bankr.E.D.Pa.1988) (landlord's termination of electric service). Denying a condominium unit owner the right to vote at an annual or special meeting because pre-petition condominium fees are past due is similarly prohibited. It pressures a unit owner to pay his past due, pre-petition condominium fees.

The unit owners association argues that this case is different. It argues that the unit owners association is not denying the debtor its right to vote. Under Article IV, Section 7, it argues, a unit owner's right to vote exists only if the unit owner is not more than thirty days past due in the payment of his condominium fees. Since the debtor is past due in the payment of condominium fees, it just does not have a right to vote in the first place. Thus, the unit owners association is not taking any action to deny the debtor his right to vote.

Alternatively, the unit owners association argues, the debtor's right to vote is limited or encumbered with the restriction that it may not be exercised if a unit owner is more than thirty days past due in the payment of his condominium fees. In this case, the restriction or encumbrance arose prior to the filing of the petition in bankruptcy. Under the Bankruptcy Code, property of a debtor that becomes property of the estate does so subject to all restrictions existing when the petition in bankruptcy is filed. Thus, the unit owners association is not taking any action to deny the debtor its right to vote because the debtor's right to vote was restricted at the time it filed bankruptcy.

The arguments are not well taken. The fact remains, Article IV, Section 7 pressures the debtor to pay its past due pre-petition condominium fees. If the debtor pays the pre-petition

condominium fees, it can vote. If it does not pay them, it cannot vote. The ability to vote is determined by whether the debtor pays the pre-petition debt. He is penalized if he does not and is rewarded if he does.⁸

The Virginia Condominium Act makes clear that when a condominium unit owner's right to vote is created, it is not created subject to a condition, a limitation or a restriction. The right to vote is an intregal and inseparable part of the condominium regime itself. At this condominium, and in most others, votes are allocated in accordance with the undivided interests in the common elements. Va.Code (1950) §55-79.77(a). The undivided interests in the common elements was determined under Va.Code (1950) §55-79.55(a). The undivided interest in the common elements allocated to each unit may not be altered and may not be separated from the unit itself. Va.Code (1950) §55-79.55(f). The number of votes appertaining to any unit may not be altered. Va.Code (1950) §55-79-71(E). These provisions may not be altered by agreement and may not be waived. Va.Code (1950) §55-79.41:1. While the number of votes appertaining to a condominium unit or the weight of a particular unit owner's vote may vary, every unit owner has the right to vote. The right to vote does not fade in and out depending on whether condominium fees are paid or unpaid or on any other circumstance. Each condominium unit has as an inseparable bundle of rights that constitutes the condominium unit. The right to vote is a part of those inseparable rights.

The unit owners association's alternative argument, that Article IV, Section 7 is a restriction on the right to vote that is effective in bankruptcy is not well taken either. One Virginia circuit court held that a unit owner's right to vote may be restricted for non-payment of condominium fees. *Clark*

⁸A chapter 11 debtor may not pay pre-petition creditors after filing bankruptcy without court authorization. The purpose is to prevent some creditors from being favored over others, either because the debtor likes them or because the creditor can exert pressure to favor it over other creditors. One principal of bankruptcy is the equal treatment of all creditors.

v. Bay Point Condo Ass'n, Inc., 2003 WL 23095986 (Va.Cir.Ct.2003) (revocation of voting rights permissible under Va.Code (1950) §55-79.80:2(C)). However described, the restriction becomes effective only upon non-payment of condominium fees for a period of thirty days and has the intended effect of coercing payment of the delinquent fees just like other remedies the unit owners association has, such as suing for the unpaid condominium fees or filing and enforcing a lien. Va.Code (1950) §55-79.84.

Unit Owners Ass'n of BuildAmerica-1 v. Gillman, 223 Va. 752, 292 S.E.2d 378 (1982) and Va.Code (1950) §55-79.80:2 are instructive. In *Gillman*, the unit owners association imposed monetary fines against Gillman for violating the condominium's rules and regulations. The Virginia Supreme Court held the unit owners association could not impose monetary fines without statutory authority and that there was no such statutory authority. The Virginia General Assembly responded by enacting what is now Va.Code (1950) §55-79.80:2 which expressly grants the authority to impose penalties for failure to timely pay assessments. Va.Code (1950) §55-79.80:2(A) only expressly allows suspension of a unit owner's right to use facilities or services for nonpayment of assessments more than sixty days past due and assessment of charges for violations of the condominium documents or the rules or regulations of the condominium. While it does not specifically address the suspension of the right to vote, Subsection C (a general provision carried over from Va.Code (1950) §55-79-80, the predecessor of Va.Code (1950) §55-79-80:2) provides that the statute will not be "construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities" to the unit owners association of the Board of Directors. Va.Code (1950) §55-79.80:2(C). The circuit court in *Clark v. Bay Point Condo Ass'n, Inc.*, viewed this subsection as authority for a unit owners association to suspend voting rights while condominium fees are past

due. *Gillman, Clark* and Va.Code (1950) §55-79.80:2 show that the suspension of a unit owner's right to vote is a remedy for nonpayment of condominium fees. Like other remedies, it can be effective. For example, Jane Brungard testified in this case that she paid \$555 in fines so she could vote and run for the Board of Directors.⁹ While the use of Article IV, Section 7 may be an effective remedy, when a petition in bankruptcy is filed the automatic stay prevents its further application.

If the unit owners association properly invoked Article IV, Section 7 pre-petition, it must stop using it when the unit owner files bankruptcy. A creditor who properly takes an act prior to the filing of a petition in bankruptcy to collect a debt, must stop the act upon the filing of the petition. "It is well established that even a technical stay violation (one committed without knowledge of the stay) can become willful . . . if the creditor fails to remedy the violation after receiving notice of the automatic stay." *Kline v. Tiedemann (In re Kline)*, 424 B.R. 516, 524 (Bankr.D.N.M.2010). A creditor who caused a state court to issue a civil bench warrant for the arrest of a debtor who, pre-petition, failed to appear in state court to answer interrogatories must cause the bench warrant to be withdrawn when the debtor files bankruptcy. *Galmore v. Dykstra (In re Galmore)*, 390 B.R. 901, 909-914 (Bankr.N.D.Ind. 2008). A creditor who issued a garnishment before a debtor files bankruptcy has the affirmative duty to promptly dismiss the garnishment upon filing of the bankruptcy petition. *In re Manuel*, 212 B.R. 517, 519 (Bankr.E.D.Va. 1997); *Baum v. United Va. Bank (In re Baum)*, 15 B.R. 538, 541 (Bankr.E.D.Va. 1981) (creditor has the "responsibility to stop

⁹Ms. Brungard testified that she was fined a total of \$555 because on one occasion she accompanied Ms. Hernandez into the manager's office and on another spoke with Mr. Cunningham, an attorney who apparently had previously represented the unit owners association. She further testified:

I feel like both of those were false charges. The only reason I paid the \$555 was because if I didn't pay it, I would be delinquent and would not have been able to run for the board. So it was to me a purely kangaroo court that they set up, but I paid it in order to run for the board.

Tr. at 93.

the downhill snowballing of a continuing garnishment.”); *In re Scroggin*, 364 B.R. 772, 779 (10th Cir.BAP 2007). A creditor who repossessed a debtor’s car pre-petition, but has not sold it before the debtor files bankruptcy, must release the car back to the debtor. *In re Brown*, 237 B.R. 316 (Bankr.E.D.Va. 1999); *In re Young*, 193 B.R. 620, 621 (Bankr.D.D.C. 1996) (seized vehicle must be returned upon debtor giving adequate assurance). This case is no different. If the act to collect the past due condominium fees (that is, invoking Article IV, Section 7 denying the debtor its right to vote) commenced before the bankruptcy was filed, the unit owners association must stop the act after the filing of bankruptcy by permitting the debtor to vote. The fact that the penalty for not timely paying condominium fees is in the By-Laws changes nothing. It is an act, and, if continued, violates the automatic stay.

The court concludes that enforcing By-Laws Article IV, Section 7 for a pre-petition condominium fee violates the automatic stay.

Did the Unit Owners Association Deny the Debtor its Right to Vote?

The unit owners association next contends that even if denying the debtor the right to vote at an annual meeting violates the automatic stay, it did not, in fact, deny the debtor its right to vote. In order to decide this issue, the court must determine what happened at the annual meeting.

Eight witnesses who were present at the meeting testified at the hearing. The testimony focused on two principal issues: Did Jane Brungard or Kevin Broncato first seek recognition from

the Chair, Dee Cuadros? Was there sufficient time after the voice vote was taken on the motion to adjourn for a unit owner to request a division of the assembly?¹⁰

Ms. Cuadros, the president of the association, chaired the annual meeting. While the proxies were being tallied to determine whether a quorum was present, the minutes of the last meeting were read and the association's attorney gave a report. Ms. Cuadros testified as to what then happened:

Q Did there come a time during the meeting when you were informed whether a quorum had been obtained?

A Yes.

Q And who informed you of this?

A Kevin Broncato.

Q And what did you do when you were informed that no quorum had been obtained?

A I read the – he gave me this document that tells what the numbers were. I read them to the – to the meeting and then I indicated that no business could be conducted because there was no quorum for the meeting and I was attempting to ask for a – a motion to adjourn when Jane [Brungard] popped up with her motion which I declared her out of order and the first hand that – that went up was Kevin Broncato's and so I called on him to make the motion which he did.

Tr. 134-135.¹¹

¹⁰A division of the assembly is the request by any member to have a voice vote taken a second time, but by a different method, such as raising hands or standing. ROBERT'S RULES OF ORDER NEWLY REVISED §4 at 49-50. (Sarah C. Robert et al. eds., De Capo Press, 10th ed. 2000).

¹¹Ms. Cuadros also testified:

Q After you made the determination that a quorum did not exist, you asked for a motion to adjourn, didn't you?

A I did.

Q And the first person to respond was Jane Brungard who moved to adjourn for 30 days, is that correct?

A Jane Brungard did respond. She was not – she was not selected to make that –

Q You didn't select her?

(continued...)

Other witnesses also testified to what happened and who first sought recognition of the Chair. The testimony is conflicting. Both counsel sought to show that some of the witnesses were in a better physical position to know who first sought recognition. After reviewing all of the evidence, the court concludes that while both Mr. Broncato and Ms. Brungard were substantially simultaneous in seeking recognition, Ms. Brungard was, in fact, first. The court reaches this conclusion because Ms. Cuadros, before recognizing Mr. Broncato, heard Ms. Brungard speak, looked at her, and spoke to her, ruling her out of order. Only then did she turn to Mr. Broncato and recognize him.¹²

¹¹(...continued)

A No, I didn't.

Q But she was the first person to jump up and move to – to adjourn?

A She jumped up and – and moved to adjourn.

Q She was the first person to, is that right?

A She was not the first person to raise her hand or his hand to make that motion.

Q She was the first person to speak?

A She was the first person to speak, which she often is.

Q And you told Ms. Brungard that you would not recognize her because Mr. Broncato, who was sitting in the back of the room had his hand up first?

A That is correct.

Tr. at 24-25.

¹²It appears that Ms. Cuadros ruled Ms. Brungard out of order because Ms. Brungard stood and sought recognition while Ms. Cuadros expected members to raise their hands and wait to be recognized. Ms. Cuadros testified that “[M]y understanding of the process is that once I ask for the motion, I expect the – whoever wants to make a motion would raise their hand and wait to be recognized before they start talking and I – I ask the first one who hand goes up, if I possibly can.” Tr. at 139. The association, Ms. Cuadros further testified, follows Robert’s Rules of Order, which are to the contrary. ROBERT’S RULES OF ORDER NEWLY REVISED states:

Obtaining and Assigning the Floor

Before a member in an assembly can make a motion or speak in *debate* . . . he must *obtain the floor*; that is, he must be *recognized* by the chair as having the exclusive right to be heard at that time. . . .

To claim the floor, a members rises at his place when no one else has the floor . . . , faces the chair, and says, “Mr. President,” or “Mr. Chairman,” or “Madam Chairman,” or whatever is the chair’s proper title. If the member is entitled to the floor at the time, the chair recognizes him.

ROBERT’S RULES OF ORDER NEWLY REVISED §3 at 28. (Sarah C. Robert et al. eds., De Capo Press, 10th ed. 2000).

The second question that the parties focused on was whether there was adequate time after the vote on Mr. Broncato's motion was taken for the debtor – or any other unit owner – to request a division of the assembly, that is, for the vote to be taken again but with the proponents and opponents standing or using some method more reliable than a voice vote. The unit owners association argued that the failure to make such a request when the request could have been made showed that there was no denial by the unit owners association of the debtor's right to vote. The debtor simply did not fully exercise its rights in this instance. The debtor responded that the undue speed with which the vote was taken, the result was announced and the meeting was adjourned denied it the ability to seek a division and was a part of the denial of its right to vote.

Again, the eight witnesses who attended the meeting had similar, but not identical recollections. Generally, those in favor of the motion to adjourn testified that there was sufficient time and those against the motion that there was not enough time. Ms. Cuadros testified about the vote. She testified, commencing immediately after her testimony set out above:

Q What motion did he make?

A [Kevin Broncato] made a motion to adjourn.

Q Was it seconded?

A Yes, it was.

Q And what did you do then?

A I waited a reasonable amount of time and then I adjourned the meeting.

Q Well, did you ask for a vote on the motion?

A Oh, yes, I did. Absolutely.

Q And what type of vote was taken?

A It was voice vote and clearly the ayes had it and so after a reasonable amount of time, as I said, I declared the meeting adjourned.

Q And can you explain to the Court how you went about proceeding with the voice vote? What did you say to the people gathered at the meeting?

A I said, "All those in favor of adjourning the meeting, please say aye."

Q And was there a response to that?

A There was.

Q What did you do then?

A Then I asked if there were any opposed to it and there were some people that – some voices that did not want the adjournment.

Q Do you know who those were?

A I have no idea.

Q And based on what you heard, what did you do then?

A I told the meeting that the ayes had it and I adjourned the meeting.

Q And did you wait any period of time between saying the ayes have it and adjourning the meeting?

A It was a reasonable amount of time, yes.

Q Did anyone attempt to make a motion during that time?

A No.

Q You know Lindsay Wilson, correct?

A Yes, I do.

Q And she was present at the meeting?

A She was.

Q Do you know how Gordon Properties voted on the motion to adjourn?

A No, I don't.

Q Did Gordon Properties make any motions after you stated that the motion to adjourn had carried?

A No, they didn't.

Q And you then concluded the meeting?

A I then concluded the meeting, yes.

Tr. at 135-136.

Lindsay Wilson, the representative of the debtor, testified to the same event:

Q And after Mr. Broncato made his motion to adjourn, tell me what Ms. Cuadros did?

A Someone – someone quickly seconded the motion and Ms. Cuadros very, very quicky, almost more quickly than my ear could hear it and it could get to my brain and process what was happening, Ms. Cuadros asked, “Any yeas? Any nays?” and people – it was such a cacophony of sounds. It was almost happening – it appeared to be happening simultaneously, but there were yeas and nays being shouted from the audience at that time.

Q And then what did she – what did she do?

A Then she made some motion. I don't know if she shut – slammed a book, rapped her hand on the table, some motion and said, “We are adjourned” so quickly my head was spinning.

. . .

Q In your estimate, Ms. Wilson, in the time that Ms. Cuadros asked for the motion to adjourn until the time that she slapped down and said meeting adjourned, how much time elapsed?

A Oh, my. It was a matter of seconds. It was stunningly fast. It felt – I – I couldn't even process that it had happened. I felt like – I felt like a card trick had just been played in front of me. I was – it took my breath away. It – 10 seconds, maybe.

Tr. at 78-79.

Ms. Brungard testified that “it happened within seconds. It was very fast.” Tr. at 89. Martina Hernandez agreed.¹³ Richard Mendelson, an attorney who had been practicing law since 1969 and was appointed by the Circuit Court for the City of Alexandria as co-conservator of Julia Langdon, one of the four members of the debtor, testified that the matter took only “[a] matter of seconds.” Tr. at 110.

Mr. Broncato who made the motion to adjourn was asked if “there was any opportunity after [Ms. Cuadros] said the ayes have it for a person present at the meeting to make any motion?” He testified that “I believe there was sufficient time. It’s – it was roughly the standard operation, the amount of time that the vote is take at almost all meetings that I’ve been present at.” Tr. at 146. Corey Brooks, a member of the Board of Directors appointed to fill a vacancy, thought that there was “a meaningful pause of several seconds.” Tr. 161.¹⁴

The ability of a unit owner to ask for a division after the vote and before Ms. Cuadros adjourned the meeting depends not only on the elapsed time but also the orderliness of the meeting

¹³Ms. Hernandez testified:

Q . . . From the time that Ms. Cuadros asked for a motion to adjourn until the time that she actually adjourned the meeting, in your estimate, how much time expired between the[m]?
A It took less than a second. It was pretty fast. It was – I mean, I was amazed by how, you know, they were carrying the whole process and so, yeah, it was that fast. It was less than a second, actually.

Tr. at 99.

¹⁴Lt. Brooks testified:

Q . . . How much – did she – how much time passed from when the chair stated that the motion to adjourn carried to the time the meeting was actually adjourned?
A Oh, there was a meaningful pause of several seconds.
Q Enough time for someone to stand up and raise their hand?
A Certainly.

Tr. at 161.

at that time. Ms. Cuadros testified that “It was a very quiet meeting.” Tr. at 137.¹⁵ Mr. Broncato agreed.¹⁶

Ms. Wilson disagreed. She thought that the meeting “completely disintegrated.”¹⁷ Mr.

Mendelson testified:

Q Now you testified that when the motion was deemed to have carried, it was a matter of seconds before the meeting was deemed adjourned. Wasn't there sufficient time for someone to stand up to be recognized?

A Well, within those few seconds. What happened was in the – in the – at the point where she was taking the voice vote, there were several – lots of people – several people speaking at once and when she declared that the ayes have it, it was over.

Q Well, but you said there was a matter of seconds.

A That's right.

¹⁵Ms. Cuadros testified:

Q Now you've heard testimony from a number of witnesses that at some point after the motion to adjourn the meeting became disorderly, is that true?

A No, it isn't. It was a very quiet meeting.

Tr. at 137.

¹⁶Mr. Broncato testified:

Q And at that time of the meeting, was it – was the meeting in disorder or what was going on at that time?

A At the time I – I wouldn't say it was in disorder. I – I would say everyone's still in their seat and/or standing at the side and then once the meeting was adjourned, people got up.

Tr. at 146.

¹⁷Ms. Wilson testified:

At that point I stood up, said, “This is not okay. What's happening here? Did I just see that happen? What's going on?” I stood in my chair, raised my hands again to say, “What is happening here?” and at that point the meeting had completely disintegrated. There was no longer a forum in which civilized speech could take place. There was arguing and shouting. People were moving from their seats. The board was departing the room. It all had completely disintegrated.

Tr. at 79.

Q And isn't it true that if you're sitting there, you can stand up in a second, can't you?

A I suppose somebody could stand up if they could understand in the chaos what was going on.

Q But nobody did that on behalf of Gordon Properties, right?

A Not that I saw under the circumstances, but it was a matter of confusion.

THE COURT: Excuse me. Would you repeat the last answer: I didn't hear it.

THE WITNESS: Not that I saw. There was quite a bit of confusion and in the course of that, Ms. Cuadros says, "We're adjourned."

Tr. at 113-114.

The court concludes that the meeting was an orderly meeting until Ms. Cuadros as chair of the meeting announced that there was no quorum and invited a motion from the floor. From that moment on, the meeting became increasingly disorderly.¹⁸ At all times, Ms. Cuadros had the ability to bring the meeting to order but failed to do so and pressed forward with Mr. Broncato's motion to adjourn sine die. The court finds that in light of the growing disorder of the meeting, there was insufficient time within which any member could reasonably have requested a division of the assembly or otherwise objected to the motion or the ruling of the chair.

These acts and the conduct of the unit owners association denied the debtor its right to vote.

¹⁸In any meeting such as the annual meeting under consideration, individual's perceptions and recollections of what transpired vary. People were seated throughout the room. Each had a better vantage point for some observations and a poorer vantage point for other observations. It is unlikely that everyone heard every word spoken. There were competing demands for attention. There were competing objectives. There were different motives. All of these factors color an individual's perception and recollection. The role of the court is to determine from the evidence presented what actually happened. In doing so, the court gives greater weight to Mr. Mendelson's testimony. He was the only witness who had no personal stake in the process. Although he is a co-conservator of Julia Langdon, one of the four members of the debtor, the outcome does not affect him personally and he has a fiduciary duty to Ms. Langdon.

Did the Unit Owners Association Violate the Automatic Stay?

Simply showing that the unit owners association denied the debtor its right to vote is not enough to show a violation of the automatic stay. The two questions counsel focused on are not the best focus of inquiry to answer this question. The better inquiry is not narrowly on who should have been recognized, whether there was sufficient time for an objection to the vote or a request for a division of the assembly, or whether these acts and the other conduct were a denial of the debtor's right to vote; but, more broadly, including but not limited to, how the meeting was conducted from the time Mr. Broncato reported the absence of a quorum to the time Ms. Cuadros adjourned the meeting.

Robert's Rules of Order required that the meeting be conducted differently. After recognizing Mr. Broncato, hearing a second and stating the motion before the assembly, Robert's Rules of Order required the chair to recognize Ms. Brungard. Ms. Cuadros knew that Ms. Brungard wanted to make a motion to adjourn to a set time and date.¹⁹ That motion is a privileged motion and is in order when a motion to adjourn sine die, that is, adjourn without fixing a date and time for meeting, is before the assembly. ROBERT'S RULES OF ORDER NEWLY REVISED §22.²⁰ Had Ms.

¹⁹This motion should not have been unexpected. When no quorum was obtained at the 2007 annual meeting which Ms. Cuadros chaired, the meeting was adjourned twice in unsuccessful efforts to obtain a quorum. Testimony of Ms. Cuadros. Tr. at 132.

²⁰Robert's Rules of Order states:

The privileged motion to *Fix the Time to Which to Adjourn* . . . [t]akes precedence over all other motions and yields to nothing. . . . The privileged motion to *Fix the Time to Which to Adjourn* can be moved even after the assembly has voted to adjourn, provided that the chair has not yet declared the assembly adjourned.

ROBERT'S RULES OF ORDER NEWLY REVISED §22 at 235.

Robert's Rules of Order also states:

(continued...)

Cuadros not known what Ms. Brungard wanted to say, she still had the obligation to recognize Ms. Brungard. Had Ms. Brungard's comments been out of order, she could have ruled her out of order as she had previously done. The role of the chair is to be impartial and to assure the fair and orderly dispatch of the business before the assembly.²¹ That means that all members who have a right to speak should be recognized, not ignored as Ms. Brungard was in this instance.

Ms. Cuadros should have, and could have, restored order after the vote on Mr. Broncato's motion was taken and before she announced the result of the vote. She heard the objections to the vote and should have interpreted them as a request for a division. It was not necessary for Ms. Brungard or anyone else to have been recognized before requesting a division. ROBERT'S RULES OF ORDER NEWLY REVISED §29 at 271 states that a division of the assembly "[i]s in order without obtaining the floor, when another has the floor and at any time after the question has been put, even

²⁰(...continued)

The privileged motion to *Adjourn* . . . [t]akes precedence over all motions except the *privileged* motion to *Fix the Time to Which to Adjourn* . . . It yields to the *privileged* motion to *Fix the Time to Which to Adjourn* . . .

ROBERT'S RULES OF ORDER NEWLY REVISED §21 at 227.

²¹ROBERT'S RULES OF ORDER NEWLY REVISED § 43, discusses the chair's duty to remain impartial during debates. It states:

If the presiding officer is a member of the society, he has – as an individual – the same *rights* in debate as any other member; but the impartiality required of the chair in an assembly precludes his exercising these rights while he is presiding. Normally, especially in a large body, he should have nothing to say on the merits of pending questions. On certain occasions – which should be extremely rare – the presiding officer may believe that a crucial factor relating to such a question has been overlooked and that his obligation as a member to call attention to the point outweighs his duty to preside at that time. To participate in debate, he must relinquish the chair . . . The presiding officer who relinquished the chair then should not return to it until the pending main question has been disposed of, since he has shown himself to be a partisan as far as that particular matter is concerned. Indeed, unless a presiding officer is extremely sparing in leaving the chair to take part in debate, he may destroy members' confidence in the impartiality of his approach to the task of presiding.

Here, there is no question about Ms. Cuadros participating in debate. She did not. But, the manner in which she handled Mr. Broncato's motion to adjourn brings into question the "confidence in the impartiality of [her] approach to the task of presiding."

after the vote has been announced”; that is “[d]oes not require a second”; and that it [d]oes not require a vote, since a single member can demand a division.”

Even if Ms. Cuadros did not hear the request for a division or did not properly interpret the demands as a request for a division, she should have, on her own initiative, proceeded with a recount by a method other than voice vote. She knew at the time the vote was taken that the debtor held a majority of votes present. She knew that Ms. Brungard and Ms. Hernandez held proxies. These three individuals were the deciding votes on the motion.²² She knew that each unit owner’s vote had held a different weight. She knew that there was substantial opposition to the motion. She testified that she “heard a number of voices vote in opposition. I don’t know who they were . . . any more than I knew who voted for adjournment.” Tr. at 26. Voice votes are a simple and effective means to determine whether a motion passes or fails where most of the assembly is of the same opinion. However, it becomes less reliable as the level of opposition increases particularly in an annual meeting of a condominium unit owners association where there is significant opposition, votes are weighted and individuals hold multiple proxies. It is wholly unreliable when one voice determines the outcome of a votes and the chair does not know how that voice voted. In the circumstances presented at this annual meeting, unless Ms. Cuadros determined how Ms. Wilson voted, she was obligated to retake the vote by a method other than a voice vote. ROBERT’S RULES OF ORDER NEWLY REVISED §4 at 48-49, states:

Verifying an inconclusive vote. A voice vote . . . may sometimes be inconclusive . . . If the chair feels that members may question a somewhat close result of which he is reasonably convinced, he can first say, “The ayes [or “the noes”] *seem* to have it.” The chair then pauses, and any member who doubts the result is thus invited to demand verification of the vote by a *division*, If no member makes such a

²²In fact, Ms. Wilson as the debtor’s representative was the sole deciding vote.

demand or states that he doubts the result, the chair continues, "The ayes have it" . . . If the chair is in actual doubt in the case of such a vote, however, he should not announce a result, but should immediately retake the vote – strictly speaking, always as a rising vote. . . . If, after a vote has been retaken as an uncounted rising vote, the chair finds himself still unable to determine the result, he should take the vote a third time as a *counted* rising vote.

Robert's Rules of Order continue in Section 29:

VOTE RETAKEN AT CHAIR'S INITIATIVE. The chair has the responsibility of obtaining a correct expression of the will of the assembly. If he is uncertain of the result of a vote or if he feels that the vote is unrepresentative, the chair can on his own accord take the vote again by a rising vote.

ROBERT'S RULES OF ORDER NEWLY REVISED §29 at 272.

There were multiple failures at the meeting. The chair failed to maintain order during the meeting and thereby prevented business that should properly have been brought before the association from being presented. The chair failed to recognize Ms. Brungard for the purpose of making a motion to adjourn to a fixed time and date. The chair failed to retake the vote on Mr. Broncato's motion both because she failed to recognize the request for a division and failed to retake the vote on her own initiative. The chair wrongly ruled that the motion passed when it failed by an overwhelming majority. The chair wrongly adjourned the meeting.

The debtor argues that the conduct violated the automatic stay, Section 362(a)(6) of the United States Bankruptcy Code. Its argument relies on the undisputed fact that it held a majority of votes at the annual meeting and voted against the motion to adjourn. It argues that if its votes had been counted, the motion would have failed. Since the motion passed, it concludes that its votes were not counted and that it was denied its right to vote, an action that, it says, necessarily violated the automatic stay.

The unit owners association counters that the debtor was allowed to fully participate in the annual meeting and to vote. If it disagreed with the ruling of the chair, the debtor through Ms. Wilson could have sought recognition from the chair and asked for a division of the assembly, that is, a recount of the vote. The debtor, it argues, did not do this, and thus, the unit owners association did nothing wrong.

The weakness of the debtor's argument is that while it is true that the debtor voted against the motion to adjourn, the motion failed even without the debtor's votes. Ms. Brungard and Ms. Hernandez voted their proxies against the motion. They constituted a clear majority against the motion even if the debtor's votes were not counted. Yet, the chair wrongly announced that it had passed. It was not that the debtor's votes were not counted. None of the votes against the motion were counted.

The weakness of the unit owners association's argument is that the chair mismanaged the annual meeting from the time she was advised that no quorum was obtained until she adjourned the meeting. She failed to recognize members who had a right to be recognized. She failed to maintain order. She failed to properly conduct the vote. In the circumstances of the growing disorder and the mismanagement, neither the debtor nor Ms. Brungard had any effective remedy. The chair's conduct was effectively the same as denying them their right to vote.

Looking at the overall circumstances, it is clear that there are major differences of opinion between the current Board of Directors and the debtor. One issue is the extent of the liability of the restaurant unit for condominium fees. The companion bankruptcy case of Condominium Services, Inc., an entity related to the debtor, reflects another issue, the propriety of the discharge of

Condominium Services as managing agent for the condominium. These flow into a more general issue, the management of the building and the membership of the Board of Directors.²³

In the struggle for control of the Board of Directors, at least four unit owners – three of whom were members of the Board of Directors – were present at the annual meeting but were not counted for quorum purposes: Ms. Cuadros, Mr. Broncato, Lt. Brooks and Mr. Terry. The By-Laws and the Virginia Code are clear, a unit owner present in person or by proxy is counted for quorum purposes. Va.Code (1950) §55-79.76(a); By-Laws Article IV, Section 5. It is not known if other directors or other unit owners were present but not counted for quorum purposes. If there were, there may well have been a quorum present.

The reasons the four gave for not registering show that they did not want the meeting to go forward. Ms. Cuadros, when asked why she did not register stated, “Well, I don’t know. I just didn’t feel like I wanted to vote that day.” Tr. 141. Mr. Broncato stated, “I did not believe that it was in the interests of the association to see – to actually have a majority at this time. So I personally decided that it was not something I wanted to see happen.” Tr. 154. Mr. Terry testified that he did not want to be a part of the quorum because, “A lot of things had been going on that concerned me about the integrity of the vote, and, honestly, I felt that it was probably better to not have a quorum that night than potentially let some of the behavior I was concerned about unfairly influence the vote.” Tr. 176. Lt. Brooks’ answer was lengthier. The essence was that he did not want the debtor “taking over the board.” Tr. 165.²⁴

²³See Testimony of Bryan L. Sells, Tr. at 48; Testimony of Ms. Brungard, Tr. 92 - 94; Testimony of Ms. Hernandez, Tr. at 98 - 102; Testimony of Kevin Broncato, Tr. at 154; Testimony of Lt. Brooks, Tr. at 165; Testimony of Jerry Terry, Tr. at 176.

²⁴Lt. Brooks testified:

(continued...)

The idea of not holding a meeting by not achieving a quorum did not arise for the first time at the meeting itself. A quorum was not achieved for the 2007 or the 2008 annual meetings. The idea was discussed among the unit owners before the meeting. Mr. Broncato, the Chairman of the Elections Committee, testified that he was aware of these conversations before the meeting. He testified:

I've seen people say to each other that it was possible that they didn't want to vote. I did not and I explicitly told them I am not going to tell you one way or the other what to do. It's not my responsibility. It's my responsibility to make sure this election is held in fairness. You all decide what you're going to do.

²⁴(...continued)

THE COURT: . . . Why is it that you didn't register your proxy?

THE WITNESS: There was no vote that was held. I was waiting to see if we were going to approach quorum or if there was going to be a quorum.

THE COURT: I don't understand that answer.

THE WITNESS: Well, if we didn't have a quorum, then there would be no reason to submit any sort of ballot. If we were so far away from a quorum, then it also didn't make sense to –

THE COURT: When were you going to make that decision?

THE WITNESS: Towards the end of the evening, sir.

THE COURT: You mean after the meeting started?

THE WITNESS: No, sir. Close enough to time. Once they started –

THE COURT: Before the meeting.

THE WITNESS: When they closed off the polls. Yes, sir.

THE COURT: So you could be last in line to the polls, so to speak?

THE WITNESS: Essentially. Yes, sir.

THE COURT: So you're going to pay attention to what was going on?

THE WITNESS: Certainly.

THE COURT: And then you were going to make a strategic decision as to whether you were going to register and be counted as a part of the quorum, is that right?

THE WITNESS: Yes, sir.

THE COURT: And what factors entered into your mind as to whether you should register to be counted as a part of the quorum versus not registering to be counted as part of the quorum?

THE WITNESS: If it appeared as though we were approaching quorum, then I certainly wanted to be counted, have my vote heard. If it looked as though there was no possibility of a quorum, then I saw no reason to put the ballot forward. There had been a lot of litigation going on. There's been a lot of questions about privacy, who might get the ballots based on court decisions, and I wanted to preserve my privacy or how I was voting, if at all possible.

THE COURT: And do you think that those types of concerns kept people from coming to the meeting?

THE WITNESS: I think those types of concerns kept people from coming to the meeting and also the possibility of Gordon Properties or its representatives taking over the board or the building as it were. I think a lot of people are concerned about that and could lead to some of the apathy as well as some of the staying home when the voting is taking place.

Tr. at 155. Similarly, Lt. Brooks testified that, "There was a lot of talk over the building about whether one should or should not, but I did not come down nor did I encourage anyone to do one thing or the other." Tr. 163. They testified that they did nothing to discourage this action. It can be inferred that they did nothing to encourage attendance at the annual meeting either.

Preventing the election of the Board of Directors by preventing the annual meeting from being held by absence of a quorum was accomplished by Ms. Cuadros. After Mr. Broncato told her that there was no quorum she recognized him to make a motion to adjourn. He had not registered for the meeting. Even though she knew that Ms. Brungard wanted to make a privileged motion to adjourn to a set time and date for the annual meeting to be reconvened, she refused to recognize her and improperly took the vote on the motion to adjourn.²⁵ She was an experienced chairperson, skilled at running meetings.²⁶ She knew that the votes were weighed and that the outcome of the voice vote was not based on the volume of the voices for or against but the weight of the votes. She knew that Ms. Wilson represented the debtor at the meeting and that Ms. Wilson's sole voice – however loud or soft – controlled the outcome of the vote. Nonetheless, she testified, she did not

²⁵The By-Laws envision a reasonable adjournment. By-Laws Article IV, Section 6 states:

If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Such an adjournment permits the association to obtain more proxies and better attendance so that business may be transacted, such as electing members of the board of directors. Proxies "terminate after the first meeting held on or after the date of that proxy or any recess or adjournment of that meeting." Va.Code (1950) §55-79.77(D). *See also* By-Laws Article IV, Section 8. Under Mr. Broncato's motion, the proxies expired upon adjournment. Under Ms. Brungard's motion, the proxies would have remained in full force and effect (unless revoked) until after the reconvened meeting.

²⁶Ms. Cuadros has resided in the condominium for thirty years. She was elected to the Board of Directors in 2005 and was elected president in 2006. She has chaired five annual meetings which includes the annual meetings since 2007 for which no quorum was obtained and at least two continuances of them. The manner in which she ran the 2009 meeting showed a familiarity and felicity in running the annual meeting. It showed a knowledge of the basics of Robert's Rules of Order. Neither inexperience nor incompetence is an explanation for the manner in which she conducted the meeting.

know who voted for or against the motion.²⁷ She wrongly ruled that the motion passed. Without adequate time for any further participation from the members, she adjourned the meeting.

The immediate purpose of the actions at the annual meeting was to continue in power the incumbent Board of Directors. In addition to Ms. Cuadros' actions, Mr. Broncato who had not registered for the meeting made the motion to adjourn and Lt. Brooks and Mr. Terry who had not registered voted in favor of it. By ignoring Ms. Brungard and her motion to set a date and time for the annual meeting to reconvene, Ms. Cuadros made it more likely that there would be no election for a year. By adjourning sine die, the existing proxies expired. Both Ms. Brungard and Ms. Hernandez expended significant effort to obtain the proxies. Now they have to start all over.

The conduct at the meeting and the motive to prevent the debtor from "taking over the board" show an abuse of power. The evidence is not sufficient to show that the acts taken at the annual meeting were a part of an effort to collect pre-petition condominium fees. The deciding factor is that the debtor was not singled out for special treatment. Even without its vote, the chair ruled that the motion to adjourn failed. Ms. Brungard and Ms. Hernandez voted their proxies against the motion.²⁸ Their combined vote, without the debtor's vote, was more than sufficient to defeat the motion to adjourn. In these circumstances, the conduct at the annual meeting was not an act to collect a pre-petition condominium assessment, but to improperly continue the incumbent Board in office for another year.

Conclusion

²⁷The court does not credit Ms. Cuadros's testimony that she did not register to vote because she did not feel like voting that day or that she did not know Ms. Wilson voted against the motion to adjourn.

²⁸M. Brungard acted independently of the debtor. Tr. at 91-92.

The debtor's motion will be denied. It should be made clear that the reason for denying the motion is that this court does not have jurisdiction to correct improper corporate actions absent a violation of the automatic stay. The Virginia circuit court has that jurisdiction and is the proper forum. This court's jurisdiction is limited to bankruptcy matters, one of which is the enforcement of the automatic stay. The motion was properly brought. The unit owners association's conduct at the annual meeting was improper. However, having concluded that this was an abuse of power and not a violation of the automatic stay, this court has no jurisdiction to correct the abuse.

Alexandria, Virginia
June 2, 2010

/s/ Robert G. Mayer
Robert G. Mayer
United States Bankruptcy Judge

copies to:

Donald F. King
Linda S. Broyhill

16009

The First Owners' Association of Forty Six Hundred Condominium, Inc.

4600 Duke Street
Suite 400
Alexandria, VA 22304
(703) 751-4600
Fax (703) 751-1120

September 29, 2010

2010 ANNUAL MEETING POSTPONED

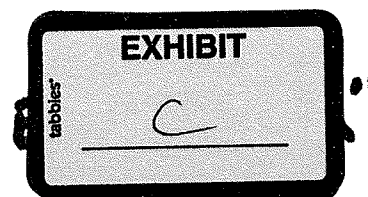
*****URGENT NOTICE TO OWNERS*****

Dear Unit Owner,

The Board of Directors regrets that it has become necessary to postpone the 2010 Annual Meeting of the First Owners' Association of 4600 Duke Street. Our legal counsel has analyzed our legal situation in the current litigation with a unit owner which filed for bankruptcy protection and has advised us that proceeding with the Annual Meeting without a court decision on the voting issue would not be advisable and would put the Association at risk. Although we requested an expedited hearing and expected to have a decision by the courts earlier this month, a decision will not be obtained for some months. Also, there has recently been improper, and likely illegal, campaign activity that has invalidated an unknown number of proxy forms. Thus, **the Annual Meeting cannot be held on October 6 and will be rescheduled once clarification of these critical issues is provided by the courts.**

FOA Legal Counsel offers the following description of our dilemma:

With respect to the issue of whether a delinquent unit owner which has filed for bankruptcy (in this case, Gordon Properties, LLC) should be allowed to vote at the upcoming Annual Meeting, we believe the Board should postpone the meeting until such time as a final decision has been obtained from the federal courts as to whether enforcement of the voter eligibility requirements of the Association's Bylaws violates the automatic stay. Otherwise, the Board is placed in the untenable position of potentially violating the stay, and subjecting the Association to sanctions and other penalties if Gordon Properties is not allowed to vote, or allowing Gordon Properties to vote in violation of the Bylaws and the Condominium Act and potentially having to throw out the results of any election if the appellate court subsequently agrees that enforcement of the Bylaws as to Gordon Properties does not violate the automatic stay. Notwithstanding the Association's efforts to obtain a binding court decision on this issue, the conflict between the apparent holding by Judge Mayer in the Bankruptcy Court and the clear provisions of the Association's Bylaws poses an insoluble dilemma for the Board and the Association which almost forces the Association to choose among alternatives which are all fraught with risk.

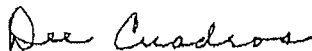


An additional factor is the Board's discovery that an unknown individual distributed to unit owners a flyer offering a chance to win a free HDTV theatre system if the unit owners will send their proxies to an anonymous post office box address. This activity, however, appears to be an illegal raffle under Virginia Code 18.2-340 et seq. In addition, the collection of proxies by an anonymous person or entity (an "undisclosed principal") would also violate established agency rules related to the proper collection of and validity of proxies. Moreover, since the person soliciting the proxies is unknown, it will be impossible to identify any proxies obtained through this improper solicitation. Use of the improper proxies will taint the integrity of any election or vote at the 2010 Annual Meeting. Accordingly, the Board should postpone the meeting to reissue new proxy forms to ensure the validity of all proxies to be used at the Annual Meeting.

Therefore, based on the analysis and recommendations by our legal counsel, following yesterday's unsuccessful effort at mediation with Gordon Properties, the Board of Directors believes that the most prudent and fiscally responsible course of action is to postpone the Annual Meeting until we receive the necessary legal guidance from the courts and have time to issue new proxy forms. As unit owners and members of the Board of Directors, we are doing our best to comply with the law, to obtain a quorum for the Annual Meeting, and to have a fair election which will not generate even more expensive and unproductive litigation.

We will keep you advised as we learn more about these issues and obtain further rulings from the courts. Thank you in advance for your patience and understanding as we seek to resolve these critical issues in the best interests of all owners.

For the Board of Directors,



Dewanda F. Cuadros
President